

## General Terms and Conditions (last update: July 2022)

### I. Scope of application/Conclusion of contracts

1. These General Terms and Conditions (GTC) apply to all – including future – contracts with companies, corporate bodies under public law and special funds under public law regarding the supply of goods and services. Purchase terms of the buyer's are not recognized, even if we do not expressly object to them again after receipt.  
The term „buyer“ within the meaning of these GTC also includes customers ordering products under contract for goods and services.
2. Our offers are non-binding and subject to change. Oral agreements, commitments, assurances and guarantees of our employees with respect to the conclusion of the contract are not binding until confirmed by us in writing. This requirement of written form is also satisfied by confirmations via fax or email.
3. A contract is concluded when we issue a written order confirmation or deliver the ordered goods. If the order is confirmed in writing, the confirmation is also binding for the content of the contract.
4. The inclusion in the delivery (provision) of test certificates according to EN 10204 must be agreed in writing. We are entitled to provide the customer with copies of the certificates and to render the name of the issuer illegible on the copy.
5. In case of doubt, the interpretation of commercial provisions shall be governed by the latest version of the Incoterms.

### II. Prices

1. Unless otherwise agreed, prices are ex factory or ex warehouse plus freight charges, value added tax and import duties. Prices of goods are calculated "gross for net". In the absence of a different agreement, the fees for test certificates according to EN 10204 are determined by the price list of the respective issuer.  
Unless otherwise agreed, the prices and conditions on the price list valid on the day of delivery shall apply.
2. If any information or third-party costs included in the agreed price change or arise within 4 weeks after dispatch of the order confirmation, we are entitled to change the price accordingly. The same applies to an increase in freight charges.
3. If the price of import deals increases due to the introduction or renewal of anti-dumping and/or countervailing duties, we are entitled to change the agreed price accordingly.

### III. Payment and set-off

1. Payment – without cash discount – must be made in such a way that we can dispose of the sum on the due date. The buyer shall bear the costs of payment transactions. The buyer has a right of retention and a right of set-off only to the extent that his counterclaims are undisputed or have been legally recognized. This applies in particular in cases where agreed test certificates according to EN 10204 are missing from the delivery or delivered late.
2. Unless otherwise agreed, our invoices are due as follows: deliveries ex warehouse within 30 days net; deliveries by drop shipping on the 15th of the month following delivery, based in each case on the invoice date.
3. If payment is not made by the due date, and in any case from the time the buyer is in default of payment, we will charge interest in the amount of 9 percentage points above the base interest rate, unless higher interest rates have been agreed. We reserve the right to claim further damages caused by the payment default.
4. If, after the contract is concluded, it becomes clear that payment is uncertain due to the customer's lack of solvency, or if the buyer is in default of payment with a considerable sum, or if other circumstances occur that indicate a significant deterioration of the buyer's solvency, we may refuse agreed advance deliveries or performance. In such cases, we may furthermore declare due all receivables resulting from the current business relationship with the buyer and demand advance payment for outstanding deliveries and services resulting from the business relationship, unless the buyer provides adequate collateral.

5. Agreed cash discounts are always based on the invoice value excluding freight charges; cash discounts will only be granted if the buyer has settled all due invoices at the time of discounting. Unless otherwise agreed, cash discount periods begin on the invoice date.

### IV. Execution of deliveries, delivery periods and deadlines

1. Our obligation to deliver is subject to correct and timely delivery by our own suppliers and, in the case of import deals, also to the timely receipt of surveillance documents and import licenses.
2. The specified delivery times are approximate times. Delivery periods begin on the date of our order confirmation and apply only on the condition that all details of the order have been clarified in advance and that the buyer has discharged all of his duties in time, e.g. provided drawings and all official certificates, presented letters of credit and guarantees, or made required downpayments.
3. Delivery periods and deadlines shall be deemed to have been met if the goods are dispatched from the factory or warehouse within the allotted period. They are also deemed to have been met with a timely notification of the goods' readiness for dispatch, if the goods cannot be shipped in time for reasons beyond our control.
4. Instances of force majeure entitle us to delay deliveries for the duration of the obstacle plus a reasonable lead time. This applies even if such events occur while we are already in default of delivery. Force majeure includes monetary and trade-related measures and other acts of sovereignty, strikes, lockouts, business disruptions that are beyond our control (e.g. fire, machine or roller breakdown, raw material or energy scarcity), obstruction of traffic routes, delays during import/customs clearance and all other circumstances beyond our control that make deliveries and the performance of services significantly more difficult or impossible. This applies regardless of whether the aforementioned circumstances affect us, the issuing factory or another upstream supplier. If the execution of the contract becomes unreasonable for either party due to the aforementioned events, the party may withdraw from the contract by immediate written declaration.

### V. Retention of title

1. The delivered goods remain the seller's property until the purchase price has been paid in full. The buyer must take all measures required to preserve this retention of title – or a comparable security interest in the country of his registered office or another receiving country – and to furnish appropriate proof on request.
2. The following supplementary provisions apply to the extent allowed by the laws of the country in which the goods are located:
  - a. The delivered goods remain our property (retained goods) until all outstanding accounts, in particular the respective account balance claims due to us within the framework of the business relationship, have been paid (current account reservation). This applies equally to future and conditional claims and instances where payments are made towards specifically designated due amounts. The current account reservation expires irrevocably with the settlement of all accounts that are still outstanding and subject to this current account reservation at the time of payment. The current account reservation does not apply to advance or cash payments that are conditional upon counter-performance. In this case, the delivered goods remain our property until the purchase price of the goods has been paid in full.
  - b. As manufacturer, our working and processing of the retained goods follows the meaning of § 950 BGB without entailing an obligation. The worked and processed goods are regarded as retained goods within the meaning of no. 1. If retained goods are processed, combined or mixed with other goods by the buyer, we shall become co-owners of the resulting product, with our ownership share being determined by the invoice value of the retained goods in relation to the invoice value of the other goods used. If our ownership expires as the result of the combination or mixing, the buyer hereby transfers to us his ownership rights to the resulting item or product in proportion to the invoice value of the retained goods and agrees to store the item or product for us without charge. Our co-ownership rights are considered retained goods within the meaning of no. 1.

c. The buyer may only sell retained goods in the course of normal business operations under normal business conditions, while he is not in default, and on the condition that the claims from the resale pass to us in accordance with d. to f. The buyer may not dispose of the retained goods in any other way.

d. The buyer hereby cedes any claims resulting from the resale of retained goods to us, together with any collateral acquired for the claim. These claims are collateral to the same extent as the retained goods. If the buyer sells retained goods together with other goods not sold by us, the buyer shall cede to us a share of the claim from the resale that reflects the proportion of the invoice value of the retained goods to the invoice value of the other goods sold. If the buyer sells goods to which we have co-ownership rights acc. to no. 2 b., he shall cede a share of the claim to us that corresponds to our co-ownership share.

e. The buyer is authorized to collect claims from the resale. This authorization expires if we revoke it, and in any case in the event of a default of payment, failure to discharge a bill or application to open insolvency proceedings. We will only make use of our right of revocation if it becomes clear, after the conclusion of the contract, that our payment claim resulting from this or other contracts with the buyer is threatened by the buyer's lack of solvency. At our request, the buyer must inform his customers immediately of the cession of the claims and turn over the documents required for collection to us.

f. The buyer must inform us immediately of any attachment or other impairment by third parties. The buyer shall bear all costs relating to the cancellation of access or recovery of the retained goods, unless these costs are reimbursed by third parties.

g. If the buyer is in default of payment or does not discharge a due bill, we may take back the retained goods, enter the buyer's premises for this purpose, if necessary, and sell the retained goods as best we can, setting off the sale price against the purchase price. The same applies if it becomes clear, after the conclusion of the contract, that our payment claim from this or another contract with the buyer is threatened by the buyer's lack of solvency. The return of the goods does not constitute a withdrawal from the contract. The provisions of the German Insolvency Code remain unaffected.

h. If the invoice value of the existing collateral exceeds the secured claims incl. secondary claims (interest, costs etc.) by more than 50 percent in total, we are obligated, at the buyer's request, to release collateral at our discretion.

## VI. Weights

1. Weights are declared based on the weighing performed by us or our presupplier. Proof of weight is furnished through submission of the weight note. Ex-factory packages are weighed gross for net. We may also determine the theoretical weight of the steel products without weighing, based on the products' length/surface. We may furthermore increase this theoretical weight by up to 2.5% to compensate for rolling and thickness tolerances (commercial weight) and calculate it based on a commercial weight of 8 kp/dm<sup>3</sup>.

2. The number of items or bundles specified in the shipping note is non-binding for goods calculated by weight. Where items are not usually weighed individually, the total weight of the shipment shall apply. Differences between the calculatory individual weights are distributed proportionally among these weights.

## VII. Acceptance inspections

1. If an acceptance inspection has been agreed, the goods may be inspected only at our warehouse, immediately after we have issued the notification of readiness for inspection. The buyer shall pay the cost of his own participation in the inspection; the material costs, incl. the costs of experts, will be charged to the buyer based on our price list or the price list of the issuing factory.

2. If the goods are not accepted, not accepted in time or not accepted completely through no fault of our own, we may ship them without acceptance or store them at the buyer's expense and risk and charge them to the buyer.

## VIII. Call orders

1. In the case of call orders, goods that have been reported ready for dispatch must be called off immediately, otherwise we may issue a reminder and either ship the goods at the buyer's expense and risk or store them and invoice them immediately.

2. In the case of contracts calling for regular deliveries, the buyer must specify call-offs and classifications for roughly equal monthly quantities; otherwise we may make these determinations ourselves using equitable discretion.

3. If the sum of the individual call-offs exceeds the contractual quantity, we are entitled, but not obligated, to deliver the surplus quantity. We may invoice the surplus quantity at the price valid at the time of call-off/delivery.

## IX. Dispatch, transfer of risk, packaging, part shipment

1. We choose the shipping route and means as well as the shipping company and haulage contractor.

2. Goods reported ready for dispatch as per contract must be called off immediately, otherwise we may issue a reminder and either ship them at the buyer's expense and risk or store them and invoice them immediately.

3. If shipping by the designated route or to the designated destination is impossible or very difficult within the scheduled time, we may deliver the goods by another route or to another destination; the buyer shall bear the extra costs involved. The buyer will be given the opportunity to state his position beforehand.

4. The risk, including the risk of confiscation, passes to the buyer as soon as the goods are turned over to a shipping company or haulage contractor, but no later than when the goods leave the warehouse or issuing factory; this applies to all deliveries, including prepaid and free deliveries. We will take out transportation insurance only at the buyer's request and expense. The buyer is responsible for unloading and the associated costs.

5. The goods are delivered unpackaged and unprotected against rust. We will package the goods if so agreed. Otherwise we will provide one-way packaging, protection and/or handling aids according to our experience and at the buyer's expense. We comply with the provisions of the Packaging Act and will therefore take back packaging that is returned to our warehouse. We will not assume costs incurred by the buyer for the return or disposal of packaging.

6. We are entitled to part shipments within a reasonable scope. We may exceed or fall short of the agreed shipment quantities within a reasonable scope. The specification of an "approximate" quantity entitles us to deviate from the contractual quantity by up to 10% in either direction.

## X. Liability for material defects

1. The inner and outer properties of the goods, in particular their quality, type and dimensions, are determined primarily by the contractually agreed condition of the goods, particularly the agreed DIN and EN standards, data sheets or other agreed technical provisions. References to standards and similar regulations, to test certificates according to EN 10204 and similar documents, and specifications of qualities, types, dimensions, weights and usability of the goods do not constitute promises or guarantees; neither do declarations of conformity and corresponding markings such as CE and GS.

2. Where the condition was not agreed, the goods are deemed free of material defects if they are fit for the contractually specified purpose. A purpose is only deemed contractually specified if the buyer informs us of this purpose in writing no later than at the time the purchase contract is concluded and if we have expressly agreed to this purpose in text form.

3. Where the goods exhibit the agreed condition as per clause X.1 and are fit for the contractually specified purpose as per clause X.2, the buyer may not claim that the goods are not suitable for normal use or exhibit a condition that is usual for materials of this type and was expected by the buyer. In this case, our liability as set forth in section XI of these GTC does not apply.

- The inspection of the goods and notices of defects are governed by the legal regulations in effect, with the provision that the obligation to inspect the goods upon receipt also extends to any test certificates according to or in compliance with EN 10204 and that we must be notified in writing of any defects of the goods or test certificates.

The buyer must inspect the goods for defects immediately upon receipt to the extent that this is possible and reasonable.

Material defects must be reported in writing immediately upon detection, in any case before the limitation period expires, and the buyer must stop any working or processing of the goods immediately upon detecting defects.

- If the buyer intends to install the goods in, or attach them to, another article, the buyer must verify those properties of the goods that are essential for their use at least randomly before installation and notify us immediately of any defects found. Failure to verify these properties at least randomly before installation/attachment is considered a particularly serious violation of the due diligence owed to us by the buyer (gross negligence). In this case, the buyer shall only be able to claim rights arising from defects of the goods if Kerschgens maliciously concealed the defect or gave a warranty for the properties of the goods.
- In the event of a justified and timely notice of defects, we may either eliminate the defect or deliver defect-free goods (supplementary performance). The place of fulfillment for supplementary performance is our registered office. If supplementary performance fails or is refused, the buyer may exercise his legal rights. If the defect is minor and/or the goods have already been sold, processed or converted, the buyer may only demand a reduction of the price.  
If the buyer does not immediately give us the chance to inspect the material defect or if he does not immediately make the faulty goods, or samples thereof, available to us, in particular following a request to this effect, all rights arising from the material defect become void.
- If the buyer has installed the defective goods in, or attached them to, another article, in accordance with the goods' nature and intended purpose, the buyer may claim reimbursement of the costs incurred in removing the defective goods and installing or attaching the improved or delivered defect-free goods ("removal and installation costs") only according to the stipulations below.  
Removal and installation costs are considered necessary only if they are directly connected to the removal/dismantling of the defective goods and the installation/attachment of identical goods, if they were incurred based on customary conditions and if the buyer can provide suitable evidence for them in textual form, at least.  
Any additional costs incurred by the buyer for consequential damage due to the defect, such as lost profit, interruption of business or additional charges for the procurement of replacements, are not considered direct removal and installation costs and thus not eligible for reimbursement pursuant to § 439 Par. 3 BGB. The same applies to sorting costs and additional charges resulting from the fact that the sold and delivered goods are in another location than the agreed place of fulfillment.
- We will assume the expense of supplementary performance only if it is reasonable in the individual case, especially in relation to the purchase price of the goods. Costs (especially removal and installation costs) shall be deemed unreasonable if they are higher than 150% of the invoiced value of the goods or 200% of the reduced value of defective goods. Not eligible for reimbursement are costs incurred by the buyer in the endeavor to rectify the defect himself in the absence of the appropriate legal prerequisites, and removal and installation costs if the goods delivered by us ceased to exist before installation due to being processed or modified by the buyer. We will also not assume expenses resulting from the transport of sold goods to another place than the agreed place of fulfillment.
- The buyer may not give notice of defects after performing an agreed inspection of the goods, if the defects were ascertainable during the agreed type of inspection. If the buyer has overlooked a defect due to negligence, he may only claim rights based on this defect if we have maliciously kept the defect secret or given a warranty for the quality of the product.

- In the case of goods sold as declassified material, the buyer has no rights resulting from a material defect if the defect conforms to the specified reasons for declassification and should reasonably be expected by the buyer. Our liability for defects as described in section XI no. 2 of these GTC does not apply to the sale of this declassified material (IIa material).

- Any further liability on our part is set forth in Section XI of these GTC. The buyer's right of recourse pursuant to § 478 BGB remains unaffected.

#### **XI. Damages and statute of limitations**

- We only accept liability – including liability for our executive staff and other proxies – for a breach of contractual and non-contractual duties, in particular due to impossibility, delay, culpability during contract negotiations and unlawful acts, if the breach was committed intentionally or through gross negligence; liability is limited to the typical damage foreseeable at the time the contract was concluded. We do not accept any other liability, including liability for direct and consequential damage caused by defects.
- These limitations do not apply in the case of a culpable breach of material contractual duties that threatens the achievement of the contractual purpose, and in the case of culpably caused harm to life, body and health; they also do not apply if and to the extent that we have guaranteed the quality of the sold product and in cases of obligatory liability based on product liability law. The regulations concerning the burden of proof shall not be affected.
- Unless otherwise agreed, contractual claims of the buyer's against us that arise on the occasion of and in connection with the delivery of the goods become time-barred one year after delivery. This period also applies to goods that are used for a structure, in keeping with their usual mode of use, and have caused the structure's defectiveness, unless this specific mode of use was agreed in writing. This regulation of limitation does not affect our liability for intentional or grossly negligent breaches of duty, culpably caused harm to life, body and health or the limitation of rights of recourse pursuant to §§ 478, 479 BGB.

#### **XII. Place of fulfillment, legal venue and applicable law**

- The place of fulfillment is the issuing factory in case of a delivery ex factory, and our warehouse for all other deliveries.
- We may opt for the legal venue to be either our registered office or the buyer's registered office.
- All legal relationships between us and the buyer shall be governed by German law; the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 (CISG) is excluded.

#### **XIII. Consumer arbitration**

- Our company does not participate in consumer arbitration proceedings based on the German Consumer's Dispute Settlement Act.

#### **XIV. Definitive version**

- In case of doubt, the German version of these General Terms and Conditions shall be considered definitive.

**Kerschgens Werkstoffe & Mehr GmbH**