

General Contractual Terms and Conditions for Streif Baulogistik GmbH - Sales Conditions

As at: 01.11.2008

1. **Ambit, Offer and Conclusion of Contract**

- 1.1 Offers and orders pertaining to the sale of the Vendor's products shall be regulated solely by the following General Conditions of Sale. These Conditions shall, without express declaration of such, be recognised as definitive and binding for the entire duration of the business relationship.
- 1.2 The Buyer's own Terms & Conditions shall not be binding on the Vendor except where the Vendor has expressly agreed to such terms.
- 1.3 Amendments, alterations or other supplementary agreements must be recorded in writing. This rules out the possibility of oral supplementary agreements. The written form may not be replaced by the electronic form.
- 1.4 The Buyer's written order confirmation shall be definitive with relation to the scope of the delivery.
- 1.5 Partial deliveries are permissible provided that they do not cause the agreed delivery time for the full delivery to be exceeded.
- 1.6 The present Contractual Terms and Conditions shall apply to business people, legal entities under public law and to public assets pursuant to Art. 310, para. 1 German Civil Code.
- 1.7 Unless otherwise agreed, all of the Lessor's offers are subject to change.

2. **Prices and Payment Terms**

- 2.1 All prices stated are net and subject to VAT at the rate valid on the invoice issue date. This shall be additionally invoiced at the respective valid rate in accordance with the respective valid fiscal regulations.
- 2.2 Sale by the Vendor to an EU member country shall be exclusive of VAT. The Buyer is responsible for the proper fulfilment of all fiscal and reporting obligations in his own country.
- 2.3 The Buyer shall either provide the Vendor with an export certificate for VAT purposes or shall present a copy of the invoice marked with an export stamp from the given customs office. Where an export certificate is not provided by the Buyer, he shall be charged VAT. The German export customs document will be prepared by the Vendor.
- 2.4 Unless otherwise agreed, payment of the purchase price shall be due in full immediately on receipt of the invoice.
- 2.5 The Buyer shall be entitled to withhold payment or to offset these against counterclaims only insofar as his counterclaims are undisputed and legally binding. Moreover he is entitled to withhold payments only where his counterclaim derives from the same contractual relationship.

3. **Delivery Time**

- 3.1 Delivery time shall be determined by the order confirmation.
- 3.2 Observance of the obligation to deliver presupposes the Buyer's timely and proper fulfilment of his obligation to cooperate.
- 3.3 Where delivery is delayed owing to circumstances for which the Buyer is responsible, the Vendor is entitled to claim any damages incurred, included any extra costs (e.g. warehouse costs).
- 3.4 Where the Vendor is responsible for late delivery, thus incurring a loss for the Buyer, the latter shall be entitled to claim flat rate compensation for delayed delivery. This compensation shall amount to 0.5% of the value for each full week of delay but at most 5% of the value of the total consignment which has not been punctually received or which cannot be used for its agreed contractual purpose because of such delay. Where, with due consideration of legal exceptions, the Buyer sets the Vendor an appropriate deadline for performance and where such deadline is not met, the Buyer shall be entitled under legislation to withdraw from the order. All other claims arising out of delayed delivery shall be regulated exclusively by Nos. 5 and 6 of these Conditions.

4. **Transfer of Risks**

- 4.1 With the handover of the goods, the risk of accidental loss and accidental deterioration of the goods shall be transferred to the Buyer. Where the goods are despatched at the request of the Buyer, the risk of accidental loss or accidental deterioration of the goods shall be transferred to the Buyer at the time of handover to the haulier, carrier or other person or office charged with the transport, irrespective of whether despatch is from the place of performance and who is responsible for the transportation costs. Where the goods are ready for despatch and despatch or acceptance are delayed for reasons beyond the Vendor's control, the risk shall be transferred to the Buyer on receipt of notification of the Vendor's readiness to despatch.
- 4.2 Packaging, whether for transport or for other purposes, in accordance with packaging regulations may not be returned. The exception to this shall be (Euro)pallets, transport containers and piling frames. The Buyer is obliged to dispose of packaging at his own expense.
- 4.3 Where so desired by the Buyer, the Vendor shall take out transport insurance cover for the consignment. All arising costs shall be borne by the Buyer.

5. **Liability for Defects**

- 5.1 The Buyer shall inspect the purchased goods immediately, but at latest within 3 working days of receipt. The Buyer shall notify the Vendor in writing of any defects in the purchased goods immediately but at latest within 3 working days of receipt with regard to visible defects and within 3 working days of having been identified with regard to non-visible defects. Otherwise the goods shall be deemed free of any defects.
- 5.2 The Buyer's defect liability rights assume that he has properly fulfilled his inspection and notification obligations as specified at No. 5.1 of these General Terms and Conditions.
- 5.3 Where the purchased goods are defective, the Vendor may, at his own discretion, either remedy the defect or deliver the goods free of defect. The Buyer shall retain the right to either reduce payment or withdraw from the contract where defects are not remedied or replacement delivery made.
- 5.4. The Vendor shall provide no warranty particularly with regard to the following:
 - natural wear and tear,
 - inappropriate or improper use,
 - incorrect assembly, operation or commissioning on the part of the Buyer or a third party,
 - incorrect or negligent treatment of the purchased goods, particularly with regard to the given operating instructions,
 - use of inappropriate machinery materials and substitute materials.
- 5.5 Where a guaranteed quality of the purchased goods is absent, the Vendor shall be liable in accordance with legislation.
- 5.6 The Vendor shall be liable under legislation where the Buyer claims damages based on deliberate action or gross negligence, including the deliberate action or gross negligence of our agents or assistants.
- 5.7 The Vendor shall be liable under legislation in the event of culpable breach of major contractual obligations including liability for the gross negligence of non-executive employees and for lesser negligence, the latter case being however limited to losses which are contract typical and may be reasonably anticipated.
- 5.8 The Vendor shall be liable under legislation for losses to life, limb or health incurred by negligent breach of obligations on the part of the Vendor or in the event of deliberate or grossly negligent breach of obligations on the part of an agent or assistant of the Vendor. The liability for losses shall be limited to foreseeable, typically occurring damage.
- 5.9 Liability for losses incurred by defects in the purchased goods, insofar as liability shall apply pursuant to the Product Liability Act for personal or material losses with regard to privately used objects, remains unaffected.
- 5.10 In all other cases, liability for loss is excluded. The Vendor shall in particular not be liable for losses not incurred through the purchased goods themselves.
- 5.11 All of the Buyer's claims, irrespective of the material or legal grounds, shall become time-barred after 12 months. Claims as stated at Nos. 5.5, 5.6, 5.7, 5.8, 5.9 and 6.1 shall be governed by the legally binding terms. The legally binding terms shall also apply for defects relating to a construction or to objects which, in accordance with their usual use, were used for a construction and caused its defectiveness.
- 5.12 Purchased goods are sold as seen to the exclusion of all defect liability, except in the event of deliberately concealed defects or a given warranty on the part of the Vendor or a breach of a third party's rights. This exclusion shall also not apply to claims arising out of defect liability incurred by the grossly negligent or deliberate breach of the Vendor's obligations or in the event of injury to life, limb and health.

6. **Other Claims for Losses**

- 6.1 Any further liability for loss than that stated in Nos. 3.4 and 5. of these General Contractual Terms and Conditions shall be excluded, irrespective of the legal nature of the acknowledged claim. This shall apply in particular to claims arising out of pre-contractual or contractual breach of obligations, delay or unpermissible action.
- 6.2 The definitively binding terms of the Product Liability Act remain unaffected.

7. **Vendor's Right to Withdraw**

The Vendor shall be entitled to withdraw from the contract either wholly or in part where, in the event that instalment payments have been agreed, the Buyer fails to meet two successive instalments or is in arrears with regard to a considerable portion of the respective given instalment, where the Buyer requests the opening of bankruptcy proceedings or some similar legal process or such a process is initiated against him or such process is rejected owing to insufficient assets.

8. **Force Majeure**

- 8.1 Where the Vendor is prevented from meeting his obligations owing to the occurrence of unforeseen, extraordinary circumstances, which

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despite all possible care to be expected with regard to the given circumstances, he is unable to prevent, irrespective of whether such circumstances occur in his own works or in the works of his sub-contractors, e.g. business interruption, official intervention, delay in the delivery of important raw materials and construction materials, or difficulties with the supply of energy, the delivery time shall be extended by an appropriate period where delivery is not impossible. Where owing to the above mentioned circumstances, delivery is impossible, the Vendor shall be released from his obligation to perform.

- 8.2 In the case of strike and lock-out too, the delivery time shall be extended by an appropriate period where delivery or performance is not impossible. Where performance is impossible, the Vendor shall be released from his obligation to perform.
- 8.3 Where in the above mentioned cases the delivery time is extended or the Vendor is released from his obligation to perform, the Buyer's right to claim for losses thus incurred and his right to withdraw shall be set aside.

9. Retention of Title

- 9.1 The goods shall remain the property of the Vendor (conditional goods) until full settlement of all demands arising out of the business relationship between the Vendor and the Buyer. The cancellation of individual demands from an open account, striking a balance and the acknowledgement thereof shall not affect the Vendor's right to retention of title. Payment shall be deemed to have been made when the Vendor has received the equivalent amount.
- 9.2 In the event of actions contrary to the contract, the Vendor is entitled to recover the conditional goods. The recovery or distraint of the conditional goods by the Vendor represents a withdrawal from the contract.
- 9.3 The Buyer is entitled to resell the conditional goods within the scope of a proper business transaction. He is however not permitted to let or mortgage the goods, or transfer or assign them as security. The Buyer is obliged in the event of resale of the conditional goods on credit to ensure that the Vendor's rights are upheld.
- 9.4 The Buyer herewith assigns any claims out of the resale of conditional goods to the Vendor and the Vendor accepts this assignment. Irrespective of the assignment and the Vendor's right to collection, the Buyer shall be entitled to collect for as long as he meets his obligations to the Vendor and does not succumb to financial collapse. The Buyer shall, at the Vendor's request, provide the Vendor with all information necessary for the collection of assigned claims and shall inform his debtors of such assignment.
- 9.5 Where the conditional goods or the advance assignment become subject to distraint by third parties, the Buyer shall immediately notify the Vendor of same in writing, providing all documentation necessary for intervention. Where the third party is not in a position to reimburse legal or out of court costs of an action to the Vendor pursuant to Art. 771 Code of Civil Procedure, the Buyer shall be liable for the Vendor's costs. In the event that the conditional goods are seized, the Buyer shall also be obliged to reimburse the Vendor for any costs incurred through their recovery.
- 9.6 The Vendor undertakes, at the Buyer's request, to release the securities accorded to him under the above terms at his own discretion where their value exceeds the asserted claim by 20% or more.
- 9.7 The Buyer is obliged to adequately insure the conditional goods at his own expense against theft, destruction and damage.
- 9.8 The Buyer is obliged to handle the conditional goods with care. Where maintenance and inspection are necessary with regard to the conditional goods, the Buyer must have such work undertaken in good time at his own expense.

10. Place of Jurisdiction

Where the buyer is a businessman, a legal entity under public law or a public asset, the place of performance and sole place of jurisdiction, summary procedures included, for both parties and for all current and future claims arising out of the business relationship shall at the discretion of the Vendor be either the place of the Vendor's head office, Essen, or the place at which the Vendor has a branch at the time the contract was concluded.

11. Other Conditions

German law shall apply to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods.