

BANDTEC Stahlband GmbH

Terms and Conditions of Delivery and Payment
(Status: June 2022)

I. General Provisions

1. All deliveries and services of the Seller – including those in the future – shall be exclusively governed by these Terms and Conditions of Delivery and Payment (hereinafter referred to as "Terms and Conditions"). In the case of drop-shipping (= delivery by the manufacturer directly to the purchaser), the terms and conditions of the price list of the commissioned supplier plant shall apply in addition. The terms and conditions of purchase of the Buyer are hereby expressly rejected. Such terms of the Buyer shall not become an integral part of the contract even if Seller has not objected their applicability and delivers the goods without any objection.
2. Amendments to these Terms and Conditions must be made in writing. This shall also apply to a waiver of this written form requirement.
3. Offers made by the Seller are non-binding. Oral declarations of Seller in connection with the conclusion of contract shall become binding only upon Seller's written confirmation.
4. In case of doubt, the INCOTERMS in the latest version at the time of contract conclusion shall be decisive for the interpretation of commercial clauses.

II. Delivery

1. Seller's obligation to deliver the goods is subject to correct and timely self-delivery to the Seller unless the Seller is responsible for the incorrect or delayed self-delivery.
2. Seller does not warrant any specific quality of goods other than the agreed specifications. In particular, Seller does not warrant the suitability/feasibility of the goods for any particular purpose. The risk of use of goods purchased from Seller is solely with the Buyer.
3. The Seller is entitled to make partial deliveries if/to the extent this is reasonable for the Buyer.
4. In the case of a successive/multiple delivery contract, the Buyer shall call-off approximately equal monthly quantities and grade classifications. If the call-off does not take place within three (3) weeks prior to the subsequent delivery month, Seller may, after expiry of a reasonable period of grace to be set, at its own reasonable discretion (i) allocate the portion and deliver (ii) or withdraw from the part of the contract still in arrears and (iii) claim for damages. If Buyer's call-off exceeds the agreed quantity, Seller shall not be obliged to deliver the exceeding quantity. If, however, the Seller complies with Buyer's request, Seller may charge the agreed price or the price valid on the day of delivery. Any excess delivery – even if made severally – does not constitute any obligation of the Seller to deliver excess quantities in the future. If the Seller exceeds the contractually agreed quantity as a result of Buyer's call-offs, the Seller shall not be obliged to notify the Buyer accordingly.

III. Qualities, Dimensions, Weights

1. Qualities, types and dimensions of the goods shall be determined in accordance with the DIN and EN standards agreed upon at the time of contract conclusion or, in the absence of such agreement, in accordance with practice and commercial custom. References to standards and similar regulations, to inspection certificates and similar certificates as well as information on qualities, types, dimensions, weights and usability of the goods shall not constitute warranties or guarantees, nor shall declarations of conformity and corresponding marks (e.g. CE and GS marks) constitute such.
2. Unless otherwise agreed, the Seller shall be entitled to reasonably exceed or fall below the agreed delivery quantities. The indication of a "circa" quantity shall entitle the Seller to an over-/under-delivery of up to 10%. In the case of sheet metal cutting, a deviation from the number of pieces of up to 10% shall be permitted.
3. The weighing carried out by the Seller or – in the case of drop shipments – by Seller's supplier shall be decisive for the weights. Proof of weight shall be furnished by presentation of the weighing receipt. Insofar as legally permissible, weights may be determined without weighing in accordance with DIN. The surcharges and deductions customary in the steel trade in the Federal Republic of Germany (commercial weights) shall remain unaffected. Quantities, bundle numbers, etc. stated in the shipping notification are non-binding for goods invoiced by weight. Unless individual weighing is customary, the total weight of the shipment shall apply. Differences compared to the calculated individual weights shall be distributed proportionately among them.

IV. Terms of Delivery

1. Seller's information on delivery dates is approximate only. Delivery periods shall commence on the date of the Seller's order confirmation and require timely clarification of all details of the order and timely performance of all obligations of the Buyer, such as providing of all official certificates, providing of letters of credit and guarantees or making of down payments. The foregoing shall apply to delivery dates accordingly.
2. The time of dispatch ex works or warehouse shall be decisive for the delivery periods and dates. These shall be deemed to have been met with notification of readiness for dispatch if the goods cannot be dispatched due to circumstances not attributable to Seller's fault.
3. Goods reported ready for dispatch in accordance with the contract must be called off by Buyer without undue delay. Otherwise, the Seller, at its sole discretion, is entitled to ship the goods at Buyer's expense and risk, or to store them and to invoice the respective goods immediately. The Seller reserves the right to choose the shipping route and the shipping method.
4. In case of late delivery, the Buyer may only withdraw from the contract after setting and unsuccessful expiry of a reasonable grace period and only insofar as the contract has not yet been fulfilled. Claims for damages in such cases shall be governed by Section XII. of these Terms and Conditions.

5. Events of Force Majeure, even if occurring during an already existing delay, shall extend the delivery period by the duration of the hindrance and a reasonable ramp-up time. In addition, these events shall entitle the Seller to withdraw from the contract in whole or in part if the event of Force Majeure continues or, at Seller's reasonable assessment, is likely to continue for a period of one (1) month. Force Majeure shall be deemed to include all unusual circumstances or extraordinary events for which the Seller is not responsible and which would make deliveries significantly more onerous or even impossible to Seller, e.g. monetary or trade policy or other sovereign measures, pandemics, epidemics, (imminent) war or similar events, sanctions/embargoes, cyber-attacks, severe weather conditions, strikes, lockouts, operational disruptions (e.g. fire, flood, lightning, etc.), significant shortages of raw materials or energy on the global markets as well as obstructions of traffic routes and regardless of whether these circumstances occur at the Seller, the supplying plant or at Seller's subcontractor/sub-supplier. Decisive for the assumption of Force Majeure is the unusual nature, but not the foreseeability of the event. In the aforementioned cases, the Buyer may withdraw from the contract if the event of Force Majeure continues for a period of two (2) months, or – recognizable to the Seller at the time of conclusion of the contract – in the event of Buyer's loss of interest. Claims for damages of the Buyer are expressly excluded.

V. Acceptance of Goods

1. If (by way of exception) acceptance of goods/services has been agreed, acceptance may only take place at the Seller's warehouse or in the supplying plant promptly after notification of readiness for acceptance. The personal and material acceptance costs shall be borne by the Buyer, whereby the Seller charges the Buyer the material acceptance costs in accordance with Seller's price list or the price list of the supplying plant.
2. If the acceptance is not carried out, not carried out in time or not carried out completely through no fault of the Seller, the Seller shall be entitled to dispatch the goods without acceptance or to store them at the expense and risk of the Buyer and to charge the Buyer for them accordingly.

VI. Transfer of Risk, Shipment

1. The risk of transfer – including the risk of seizure of the goods – shall pass to the Buyer when the goods are handed over to the forwarder or carrier, but at the latest when they leave the factory or warehouse. Seller ensures insurance only on Buyer's instructions and at Buyer's expense. The obligations and costs of unloading are borne by the Buyer.
2. The goods are generally delivered unpacked and not protected against rust. Only if this is customary in the trade, Seller shall deliver packaged goods. Seller shall provide packaging, protective and/or transport jigs according to his experience at the Buyer's expense. These will be taken back at the Seller's warehouse. The Seller is not responsible for the Buyer's costs for the return transport or for the Buyer's own disposal of the packaging.

VII. Prices

1. Unless otherwise agreed, the prices of Seller's price list valid at the time of conclusion of contract shall apply plus statutory value added tax (VAT).
2. If taxes or other external costs/levies included in the agreed price change later than four (4) weeks after conclusion of the contract or if they are newly imposed, the Seller shall be entitled to increase the sales price accordingly.
3. In case the adjusted price exceeds the initial price by more than 10%, the Buyer has the right to withdraw from the contract with respect to the quantities affected by the price adjustment as soon as the price adjustment becomes effective. The right of withdrawal may only be exercised by Buyer within one (1) week from the date of Buyer's knowledge or possibility of knowledge of Seller's price adjustment.

VIII. Payment Terms, Retention, Off-set

1. Payments must be made at the free disposal of the Seller on the due date at the expense of the Buyer without any deduction. All costs of payment transactions shall be borne by the Buyer.
2. Buyer is only entitled to exercise a right of retention and to offset insofar as his counterclaims are undisputed or have been legally established. This shall not apply in case of justified warranty claims of the Buyer. The Buyer shall only be entitled to exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship.
3. Cheques and bills of exchange are accepted by the Seller as conditional payment subject to receipt of the equivalent value, without affecting the due date of his invoices. The submission of bills of exchange requires written agreement. Costs and expenses shall be borne by the Buyer.
4. Invoices shall be payable by the 15th day following the date of written notification of dispatch of the goods to the Buyer or - in the cases of IV. No. 2, p. 2 - by the 15th day of the month following the notification of readiness for dispatch.
5. In case of Buyer's non-compliance with the terms of payment or in case of default, an interest rate of nine (9) percentage points above the base interest rate (§ 247 BGB) shall apply. Seller reserves its right to claim further damages caused by Buyer's default in payment.
6. If, after the conclusion of the contract, the Seller becomes aware of a significant deterioration in the Buyer's financial situation which endangers the Seller's claim for payment, the Seller shall be entitled to make the claim for payment due immediately, irrespective of the term of any bills of exchange received. Furthermore, advance payments (prepayment) may be requested for further deliveries. The Buyer may avoid the legal consequences described above by providing sufficient and reasonable security on the amount of payment claim(s) at risk.
7. Seller reserves the right to use payments to settle the earliest invoice items due plus the default interest and costs accrued thereon in the following order: costs, interest, principal claim.
8. An agreed cash discount always relates to the invoice amount only excluding freight and requires complete settlement of all payments of the Buyer which are due at the time of making usage of the cash discount. Unless otherwise agreed, cash discount periods shall commence from the invoice date.

IX. Retention of Title

1. All goods delivered shall remain the property of the Seller as reserved goods until all claims have been fulfilled, in particular also the respective balance claims to which the Seller is entitled within the scope of the business relations (balance reservation). This also applies to claims arising in the future and conditional claims, e.g. from acceptor's bills of exchange, and also if payments are made on specifically designated claims. This reservation of balance finally expires upon settlement of all claims still outstanding at the time of payment and covered by this reservation of balance.
2. Treatment and processing of the reserved goods shall be carried out for the Seller as manufacturer within the meaning of § 950 BGB (German Civil Code) without obligating him. The processed goods shall be deemed to be goods subject to retention of title within the meaning of Para. 1. If the goods subject to retention of title are processed, combined and/or mixed with other goods by the Buyer, the Seller becomes co-owner of the new item on a pro rata basis in the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods used. If Seller's ownership ceases as a result of combining or mixing, Buyer hereby assigns to the Seller the ownership rights to which it is entitled in the new stock or item to the extent of the invoice value of the goods subject to retention of title and shall hold them in safe custody for the Seller free of charge. The Seller hereby already accepts this transfer. Co-ownership rights of the Seller shall be deemed to be reserved goods within the meaning of Para. 1.
3. The Buyer may only sell the reserved goods in the ordinary course of business under his normal terms and conditions and as long as he is not in default, provided that the claims from the resale are transferred to the Seller in accordance with No. 4 to 6 below. Buyer is not entitled to dispose of the reserved goods in any other way.
4. The Buyer hereby assigns to the Seller the claims arising from the resale of the reserved goods together with all securities which it acquires for the claims. The Seller hereby accepts the assignment. They shall serve as security to the same extent as the reserved goods. If the reserved goods are sold by the Buyer together with other goods not sold by the Seller, the claim arising from the resale shall be assigned to the Seller in the ratio of the invoice value of the reserved goods to the invoice value of the other goods. In the sale of goods in which the Seller has a co-ownership share pursuant to No. 2 above, the portion corresponding to this co-ownership share shall be assigned to the Seller.
5. The Buyer shall be entitled to collect claims assigned to the Seller from the resale. This authorization to collect shall expire in the event of revocation by the Seller, but at the latest in the event of default in payment, non-redemption of a bill of exchange or application for the opening of insolvency proceedings. The Seller shall only exercise its right of revocation if, after the conclusion of the contract, it becomes apparent that its claim for payment under this or other contracts with the Buyer is endangered by the Buyer's lack of solvency. The Buyer shall be obliged to inform its customers immediately of the assignment at the Seller's request, unless the Seller informs them itself. At the request of the Seller, the Buyer shall also be obliged to provide the Seller with the information and documents required for collection. The Buyer shall not be entitled to further assignment of the claims assigned to the Seller.
6. The Buyer shall notify the Seller immediately of any seizure or other interference by third parties. The Buyer shall bear all costs incurred for the cancellation of the seizure or for the return transport of the reserved goods, insofar as they are not reimbursed by third parties.
7. If the Buyer is in default of payment or does not honor a bill of exchange when due, the Seller shall be entitled to take back the reserved goods – for which purpose the Seller may enter the Buyer's premises – and to sell them at the best possible price, crediting the purchase price. The same shall apply if, after conclusion of the contract, it becomes apparent that the Seller's claim for payment under this contract or under other contracts with the Buyer is endangered by the Buyer's lack of solvency. Taking back the reserved goods shall not constitute withdrawal from the contract. The provisions of the applicable Insolvency Code shall remain unaffected.
8. If the realizable value of the existing securities exceeds the secured claims including ancillary claims by more than 10% in total, the Seller shall be obliged to release securities at its discretion upon Buyer's request.

X. Inspection of Incoming Goods

1. Statutory provisions shall apply to Buyer's obligations to inspect the incoming goods and to give notice of defects. Apparent defects shall be notified to the Seller in writing without delay, but no later than eight (8) days after receipt of the goods at the place of destination. Defects that could not be detected despite proper inspection of incoming goods (hidden defects) shall be notified in writing without undue delay after detection. Buyer shall immediately stop processing of the goods affected. In all cases, the goods must be kept available for inspection in unchanged condition after discovery of the defect. If the Buyer breaches the obligation to notify (in time) or if Buyer processes the goods after the defect has been detected, the goods shall be deemed to have been accepted by Buyer.
2. In the event of a justified notification of defects in due time, the Seller may repair the goods or take back the goods and deliver goods free of defects. Only in case of failure or refusal of the subsequent performance, the Buyer can withdraw from the contract or reduce the purchase price. If the defect is not substantial or if the goods have already been sold, processed or transformed, he is only entitled to the right to reduce the purchasing price.
3. In the case of goods sold as declassified material – e.g. as so-called IIA material – the Buyer shall not be entitled to any warranty rights with regard to specified defects and defects which he usually has to expect.
4. Seller's further liability shall be governed by Section XII. of these Terms and Conditions. §§ 445a, 445b BGB shall remain unaffected.

XI. Usage and Processing

The Buyer shall examine the goods delivered by the Seller for their suitability/feasibility for Buyer's intended use.

XII. Liability and Statutory Limitation

1. The Seller shall be liable for breach of contractual and non-contractual obligations, in particular for impossibility, delay, culpa in contrahendo and tort, including for its executive employees and ordinary vicarious agents, only in cases of intent and gross negligence. In addition, liability for gross negligence of ordinary vicarious agents is excluded insofar as the damage foreseeable at the time of conclusion of the contract and typical for the contract is exceeded.

2. The limitations of liability of Para. 1 do not apply in case of culpable breach of essential contractual obligations, in case of damage culpably caused to life, body and health and not if/to the extent Seller has assumed the guarantee for the quality of the goods, as well as in cases of mandatory liability according to the Product Liability Act (*Produkthaftungsgesetz*). The rules on the burden of proof shall remain unaffected. A contractual obligation is essential if its fulfillment makes the proper execution of the contract possible and on whose compliance the Buyer may typically rely and has relied on. In this case, however, Seller's liability shall be limited to compensation for the damage typical occurs for the contract and which is foreseeable at the time of contract conclusion.
3. Unless otherwise agreed, contractual claims of the Buyer against the Seller arising from or in connection with the delivery of the goods shall become statute-barred one year after delivery of the goods. This period shall also apply to such goods which are used in accordance with their customary manner of use for a building and have caused its defectiveness unless this manner of use has been agreed in writing. This shall not affect Seller's liability for (i) intentional and grossly negligent breaches of obligations, (ii) culpably caused damage to life, body and health, (iii) the assumption of a guarantee and (iv) the limitation of claims under a right of recourse pursuant to Sections 445a, 445b of the German Civil Code (BGB); in these cases, the statutory limitation provisions shall apply. The mandatory liability under the Product Liability Act (*Produkthaftungsgesetz*) shall also remain unaffected.

XIII. Commission Work

The terms and conditions of delivery and payment shall apply to commission work accordingly. In addition, the following shall apply: In the event of justified complaints, the Seller (Contractor) shall only be liable up to the amount of ten times the invoiced costs. This shall not apply if Seller's breach of contract is based on Seller's intention or gross negligence.

XIV. Unauthorized Onward Delivery/Misdirection

1. The Buyer may not ship products
 - a) which are not expressly sold for export to third countries, not to be transferred outside the EC in an incomplete condition.
 - b) which are sold for export to third countries, may not be left in the territory of the EC in an incomplete condition, returned or shipped back there, nor may they be delivered or shipped to a country other than the country of destination specified in the order. These goods may also not be processed in the territory of the EC. The territory of Norway shall be deemed equivalent to the EC.
2. At the Seller's request, the Buyer shall be obliged to provide evidence of the whereabouts of the material. The Purchaser shall also impose the obligation pursuant to No. 1 on its customers and oblige them to pass it on accordingly. The Buyer shall assert the claims arising therefrom and, upon request, assign such claims for evidence, damages and contractual penalties to the Seller. He shall be obliged to inform the Seller without delay of any infringements by his customers of the obligations imposed in accordance with sentence 1.
3. If the Buyer culpably violates the obligations in No. 1 or No. 2 above, the Buyer shall pay a contractual penalty of 30% of the agreed net purchase price. We reserve the right to claim further damages. In this case, the contractual penalty shall be offset against the claim for damages.
4. If the goods have been shipped to a place and/or address other than the one specified in the invoice, the Buyer shall reimburse all benefits granted with regard to the specified consignee, even without having to prove any fault on his part. In addition, he shall reimburse EUR 70,- per ton of misdirected goods, but at least twice the value of the benefits occurred.

XV. Reservation of Performance

The performance of the contract is subject to the proviso that there are no obstacles due to German, US- or other applicable national, EU- or international regulations of foreign trade law as well as no embargos or other sanctions. The Buyer shall be obliged to provide all information and documents required for the export, transfer or import.

XVI. Confidentiality

The commercial, business and technical information of the Seller shall, as long as and to the extent that it is not demonstrably public knowledge or has not been designated by the Seller for resale by the Buyer, be kept secret from third parties and may only be made available in the Buyer's own business to those persons who must necessarily be involved in its use and who are also bound to secrecy. The information shall remain the exclusive property of the Seller.

XVII. Data Protection

The Seller collects, processes and stores personal data of the Buyer for the purpose of initiating, concluding and/or executing a contract in accordance with the applicable data protection provisions, in particular the German Federal Data Protection Act (BDSG) and the German Data Protection Regulation (DSGVO). Details on the type, scope and purpose of the collection, processing and use of personal data can be found in the Seller's privacy policy, which can be viewed at <https://www.bandtec.de/datenschutz/>.

XVIII. Place of Performance, Applicable Law, Place of Jurisdiction, Effectiveness Clause

1. The place of performance for deliveries shall be Seller's plant in the case of ex-works deliveries and Seller's warehouse in the case of all other deliveries.
2. The exclusive place of jurisdiction – including international jurisdiction – shall be at Seller's registered office. However, the Seller shall be entitled to sue the Buyer at the Buyer's principal place of business.
3. All legal relations between the Seller and the Buyer shall be governed by German law. The provisions of the Vienna UN Convention of 11 April 1980 on Contracts for the International Sale of Goods (CISG) are expressly excluded.
4. If individual provisions of a contract concluded between the parties are invalid, this shall not lead to an overall invalidity of the respective delivery contract.