



1. Scope of Application; Conclusion of Contract

- (1) These Terms and Conditions of Delivery and Payment shall apply to all - also future - supplies and services - provided by us, including proposals, advices and other auxiliary services.
- (2) Our Terms and Conditions of Delivery and Payment shall apply to the exclusion of any general terms and conditions of business (GTC) on behalf of the Customer; objection is hereby made against any purchase terms and conditions and other GTC on behalf of the Customer. This objection shall apply even if no further objection is made after receipt of those terms and conditions.
- (3) Our offers shall be subject to changes.
- (4) Offers and orders from the Customer shall be deemed to be accepted by us only with our express declaration of acceptance. Silence with respect to such an offer or order shall not be deemed to be an acceptance.
- (5) Any declarations made by us shall be made in writing or electronically in the meaning of §§ 126a, 127 of the German Code of Commerce (BGB). To fulfil the requirements of a written form, it is sufficient to have a copy of the original document kept and signed by us. Completely machine-made orders which are marked as such shall be excluded from the above written form requirement.
- (6) In case of deliveries into other EU member states, the Customer shall be required to communicate us his VAT identification number prior to the conclusion of contract.

2. Scope of Performance; Place of Performance

- (1) The Customer is only be entitled to require goods from our own production and services provided by us respectively.
- (2) The place of performance for delivery shall be the place of the supplying plant or warehouse; the place of performance for the Customer's payment obligation is the location of the bank account stated on our invoice.

3. Price, Proof of Export, Payment, Security

- (1) Unless otherwise agreed, prices quoted are understood to be ex works prices plus domestic or foreign value added tax in the respective statutory amount. Payment shall be made until the 15th day of the month following the delivery ex works or ex warehouse without any deduction of cash discount so that we are able to dispose of the respective amount on the due date.
- (2) All customs, consulate fees, freight rates, insurance premiums and other costs that are connected with the performance of contract shall be invoiced separately to the Customer. If it is otherwise agreed, namely, that such costs shall be included in the price, any possible cost increase occurring after the conclusion of the contract shall be invoiced to the Customer.
- (3) Should a Customer domiciled outside the Federal Republic of Germany or the Customer's agent collect the goods or ship or send them into a foreign country, the Customer must provide us with pertinent documents complying with the legal value added tax requirements applying in the Federal Republic of Germany. If this evidence is not provided within 30 days after having delivered the goods, the Customer has to pay the value added tax for the invoice amount according to the VAT law valid for deliveries within the Federal Republic of Germany.
- (4) The Customer may do offsets only with unquestionable or legally determined receivables. He may only claim any rights of retention as far as they are based on the same contract.
- (5) If the customer is in default with the payment or is there a risk for our outstanding receivables due to a deterioration of the Customer's creditworthiness, we shall be entitled to call our receivables due or to demand securities. We shall also be entitled to revoke the collection authorization pursuant to item 13, paragraph 7 hereof. Furthermore, we shall be allowed to perform still-outstanding deliveries only upon payment of advance payments or with provision of security.
- (6) Should the Customer be in default with payment and such indicates a risk to the capability of realizing a substantial portion of our receivables, then we shall be entitled to prohibit the further processing of the



goods already delivered by us, to retrieve the goods and, if applicable, to access the business operations of the Customer for this purpose. Such retrieval does not constitute a withdrawal from the contract.

- (7) This shall not affect the statutory regulations on default of payment.

4. Group Clearing

- (1) In agreement with all the companies affiliated with the Salzgitter AG Group of Companies we shall be authorized to set off with all receivables which we, Salzgitter AG or those companies in which Salzgitter AG holds a direct or indirect participation have outstanding against the Customer. Furthermore, we shall be entitled to set-off against all receivables which the Customer, regardless of the legal reason, has against us, against Salzgitter AG or those Group companies mentioned in sentence 1.

This shall apply even when cash payment on the one side and bills of exchange or other obligations on the other side have been agreed for payment purposes.

- (2) Upon request, we shall make available a complete list of the Group companies of Salzgitter AG named in paragraph 1.
- (3) Securities existing for us or for one of the above-mentioned companies shall also guarantee the claims of all these companies.

5. Dimensions; Weight; Quality

- (1) Any deviations in respect of dimensions, weight and quality are permissible within the framework of applicable DIN norms or customary practice, insofar as not otherwise agreed.
- (2) If the price is expressed by weight, weights shall be determined on our certified scales and shall be binding for invoicing. Proof of weight shall be by way of the provision of the weighing record. Unless individual weights are usually established, the total weight of the shipment applies, regardless of the means of transport. Any difference with regard to the calculated weight of the single pieces shall be proportionally allocated to them. Bundled goods are weighed gross for net.

6. Packaging

Unless otherwise agreed, goods shall be delivered unpacked and unprotected against rust. If packaging is explicitly agreed, then it shall be invoiced to the Customer and not taken back. We can instead - with invoicing of a charge for use and deposit - demand return of the packaging.

7. Acceptance

- (1) If an acceptance is agreed, it shall be carried out without undue delay after notification of readiness for acceptance. We shall bear the acceptance costs accruing to the factory; other expenses that accrue in relation to the acceptance or that are charged to us by third parties shall be borne by the Customer.
- (2) In the event that particular quality provisions are agreed, the Customer shall be obligated to take acceptance upon our request.
- (3) Should the acceptance not be undertaken in a timely manner or incompletely due to no fault of our own, then we shall be entitled to perform the delivery without acceptance or to store the goods at the cost and risk of the Customer.

8. Transfer of Risk; Shipment

- (1) Unless otherwise agreed, we shall have the choice of the means of transport and the transport route. In this case, we shall designate the forwarding agent and/or the carrier.
- (2) With the handover to the Customer, the forwarding agent or the carrier, at the latest, however, once the goods leave our premises, risk is transferred to the Customer.
- (3) INCOTERMS as valid on conclusion of the contract shall apply to the interpretation of trade terms used in the contract.



- (4) Should the loading or shipment of the goods be delayed for reasons for which the Customer is responsible, then we shall be entitled to place the goods in a warehouse at our discretion at the cost and risk of loss of the Customer, to undertake all measures appropriate for the maintenance of the goods and to invoice the goods. Our payment claim is payable and due in this case 30 days after the invoice date. This date is deemed to be the date of delivery in accordance with item 10 (10) of these Terms and Conditions of Delivery and Payment.

The same shall apply if goods notified as being ready for delivery are not called up within four days. This shall not affect the statutory regulations on default in acceptance.

- (5) In case of damage to goods in transit, the Customer shall have the facts ascertained by the competent authorities.
- (6) We shall be entitled to partial deliveries.
- (7) We reserve the right to ship the delivery from a foreign factory or warehouse or from a foreign subcontractor.

9. Delivery Time, Delay in Delivery

- (1) Delivery times shall commence on the date of our order confirmation, but not prior to complete clarification of all details of the order. The same shall apply to delivery dates.
- (2) If the Customer does not perform contractual obligations - also cooperation or auxiliary obligations - (such as e.g. opening of a letter of credit, production of domestic or foreign certificates, making of an advance payment or the like) in a timely manner, we shall be entitled to reasonably postpone our delivery times and delivery dates - regardless of our rights arising from the default of the Customer - in accordance with the requirements of our production operations.
- (3) If we are prevented from the fulfillment of our obligations by the occurrence of unforeseen events that affect us or our suppliers or subcontractors, and that we also could not avoid by exercising due care and attention as required by the circumstances of the individual case, e.g. war, force majeure, national unrest, forces of nature, accidents, strike and lock-out, other disruptions of operation and delays in the delivery of essential working materials or starting materials, the delivery time shall be extended by the duration of such impediment and a reasonable start-up period. In the case that the delivery will become impossible or unreasonable due to this impediment, we shall be entitled to withdraw from the contract; the Customer shall have the same right if the acceptance becomes unreasonable to him due to the delay.
- (4) With failure to meet delivery deadlines, the Customer shall first be entitled to rights arising from § 323 BGB if we are in default and he has fixed a reasonable deadline for delivery which - insofar as in deviation of § 323 BGB - includes a statement that he shall refuse acceptance of the performance after expiration of the deadline; after unsuccessful expiration of the deadline, the claim for performance shall be precluded. The right of withdrawal shall generally concern only the part of the contract that has not been performed yet. Should partial deliveries provided be unusable for the Customer, he shall be entitled to withdraw in respect of these partial deliveries.
- (5) Further rights arising from default of delivery, in particular, damage claims are precluded to the extent stated in item 12 hereof.

10. Duties of Loyalty

- (1) The contracting parties shall commit themselves to mutual loyalty. They must particularly refrain hiring or otherwise employing within twelve months after having completed the cooperation personnel or former personnel that have worked in connection with the execution of the contract
- (2) The contracting parties undertake to maintain confidentiality in respect to the order and to keep all information and knowledge obtained confidential as long as such information and knowledge are not public domain or state of the art. The contracting parties shall impose such obligation to third parties that have access to information exchanged.

11. Copyrights, Patent Rights and Other Property Rights



- (1) The Customer shall, to the extent of due diligence usual in his industry, be obliged to ensure that the services ordered by him may be executed without infringing copyrights, patent rights or other property rights (hereinafter the "Property Rights") of any third persons. If any conflicting Property Rights are or become known to us, we will immediately notify the Customer of the existence of such Property Rights and request the Customer's decision on their application.
- (2) If any copyrights, patent rights or other property rights arise from or in connection with the work results by SZMF, such shall be the exclusive rights of SZMF.
- (3) Each contracting party shall file for property rights any inventions arising with it on its own behalf and at its own expense. The contracting parties shall bear the inventor's awards for their inventors on their own. Any joint inventions within the contractual services shall be filed together according to the shares of both parties in the invention, the arising expenses being shared.
- (4) Unless otherwise agreed upon between the contracting parties, the Customer shall receive an exclusive exploitation right towards the overall result of the development, which entitles him to process, to manufacture and to distribute corresponding products. If the development result includes any Property Rights of SZMF or any affiliated companies of Salzgitter AG that already exist or that arise during the development result, the Customer shall receive a simple, non-exclusive license against payment that is limited to the exploitation of such rights in the development result as a whole. The Customer shall only be entitled to the aforesaid rights after full payment of our respective services.

12. Claims for Defects

- (1) The condition and quality and absence of defect in accordance with the contract of our goods shall be measured exclusively pursuant to the express agreements concerning quality/characteristics and amounts of the goods ordered at the date of the transfer of risk.
- (2) For goods which are sold as degraded materials - e.g. so-called "IIa materials" - we shall not be liable for the stated defects and for such defects which the Customer generally must expect with such materials.
- (3) We do not give any guarantee for a special application or fitness for a special purpose unless explicitly otherwise agreed; otherwise, the risk of suitability and use is exclusively the responsibility of the Customer.
- (4) We shall not be liable for any deterioration or destruction or incorrect use of the goods after the transfer of risk.
- (5) The contents of the agreed specification and any explicitly agreed purpose do not imply a guarantee; the provision of a guarantee shall require a written agreement.
- (6) The Customer shall inspect the goods received without undue delay after receipt. Warranty rights of the Customer shall exist only if the Customer notifies us without undue delay about defects. Latent material defects shall be reported immediately following their discovery.

After the carrying out of an agreed acceptance, notice of any defect which should have been detected during acceptance shall be excluded.

- (7) In case of complaints, the Customer shall, without undue delay, give us the opportunity to examine the goods in question; on request, the related goods or a sample of the same shall be made available to us at our own expense. We reserve the right to charge the Customer freight and handling costs as well as the inspection costs at customary market prices in the event of unfounded complaints.
- (8) If a defect of quality exists, we shall, at our discretion - taking into account the interests of the Customer - carry out a substitute performance either through the supply of a replacement delivery or rework.

If the substitute performance is not carried out by us successfully within a reasonable period, the Customer may set us a reasonable deadline for substitute performance after the unsuccessful expiry of which the purchaser may either reduce the purchase price or withdraw from the contract; any further rights due to defects are excluded to the extent set forth in item 14 hereof.

- (9) In case a defect of title exists, we shall be entitled to proceed to a subsequent performance through elimination of the defect of title within a reasonable time period which shall generally be at least two weeks as of receipt of the notification of defect. Otherwise, paragraph 8 hereof shall apply accordingly.



- (10) The period for the statute of limitations of claims due to defects of quality of movable goods, notwithstanding §§ 478, 479 BGB and insofar as not otherwise expressly agreed between the parties, shall be
- a) a term of three years after delivery of goods which are used in accordance with their usual purpose for a building and which caused its defectiveness
 - b) and otherwise one year as of delivery.
- In addition, with regard to the statute of limitations provisions relevant for the defects, the statutory provisions shall apply.
- (11) Should the Customer be entitled to recourse claims against us pursuant to § 478 BGB, these shall be limited to the statutory scope of the warranty claims of third parties against the Customer. The Customer shall defend any such claims - insofar as possible.
- (12) We shall provide a warranty in the same manner for the rework or replacement delivery as for the original delivery. Respective claims shall be time-barred
- a) with goods which are used in accordance with their usual purpose for a building and which caused its defectiveness, after three years as of completion of the rework or the delivery of a replacement delivery but by no means, however, later than 48 months after the original delivery mentioned in sentence 1 hereof,
 - b) otherwise one year after completion of the rework or delivery of replacement delivery but by no means, however, later than 18 months after the original delivery mentioned in sentence 1 hereof.

13. Retention of Title; Assignment of Claims

1. The delivered goods remain our property (goods subject to retention of title) until full payment of all receivables, in particular, also the respective balance receivables which we have against the Customer within the framework of the business relationship.
2. Any machining or processing of the goods subject to retention of title shall be carried out for us as manufacturer within the meaning of § 950 BGB without placing us under any obligation. The machined and processed goods shall be deemed as goods subject to retention of title within the meaning of paragraph 1 hereof.
3. If the Customer processes, combines or mixes the goods subject to retention of title with any other goods, we shall be entitled to joint ownership of the new product, in proportion to the ratio of the invoiced value of the goods subject to retention of title to that of the other goods used. If our ownership expires through any such processing, combining or mixing, the Customer shall hereby transfer to us any proprietary rights or expectant rights he may have in the new entity or article, to the amount of the invoiced value of the goods subject to retention of title, in the case of processing, according to the ratio of the invoiced value of the goods subject to retention of title to that of the other goods used and shall hold the new entity or article in safe custody for us free of charge. Our rights of joint ownership shall be deemed to be goods subject to retention of title within the meaning of paragraph 1 hereof.
4. The Customer may resell the goods subject to retention of title only in the normal course of business on his normal business terms, and as long as he is not in default of payment, provided that he reserves the retention of title towards his customer, and that any claims arising from the resale are assigned to us as stipulated in paragraphs 5 and 6 hereof. He shall not be entitled to dispose of goods subject to retention of title in any other way.

The use of the goods subject to retention of title for the fulfilment of contracts for work and services and contracts for work and materials shall also be deemed to be a resale.

5. Any claims by the Customer arising from the resale of goods subject to retention of title shall hereby be transferred to us; the same applies to the amount of the respective balance claims if claims arising from resale are put into a current account. Such claims assigned shall serve as security to the same extent as the goods subject to retention of title within the meaning of paragraph 1 hereof.
6. Should the goods subject to retention of title be resold together with goods not delivered by us, then the receivables from the resale or the respective balance receivables shall be assigned to us in the proportion of the invoice value of the goods subject to retention of title to the invoice value of the other goods.



In case of a resale of goods to which we have co-ownership rights pursuant to paragraph 3 hereof, a portion of the receivables shall be assigned to us corresponding to our co-ownership share.

7. The Customer shall be entitled to collect receivables from the resale or balance receivables, unless we revoke the collection authorization in the cases named in item 3, paragraph 5. At our request, he shall be obliged to notify his customers immediately of the assignment to us - unless we do so ourselves - and to submit to us the information and documentation required for collection.
8. The Customer shall in no case be authorized to make any further assignment of claims. This shall also apply to factoring transactions which are also not permitted to the Customer by reason of our authorization for collection. We are, however, prepared to agree to factoring transactions in individual cases insofar as the equivalent amount here from finally flows to the Customer and the settlement of our receivables is not threatened.
9. The Customer must notify us of an attachment or other encumbrance arising from third parties without undue delay.
10. If the value of existing securities exceeds the secured claims by more than 10 % in total, we shall be obliged pro tanto, at the Customer's request, to release securities at our discretion.
11. Should the retention of title not be legally valid according to the law applicable where the goods are located, then a security corresponding to the retention of title shall be deemed to be agreed. Should the cooperation of the customer be necessary for the creation of such rights, then he shall undertake all measures which are necessary to establish and maintain such rights.

14. General Limitations of Liability

- (1) Unless otherwise provided in these Terms and Conditions, we shall be responsible for a loss caused by the violation of contractual or non-contractual obligations or in the course of contract negotiations only in cases of our representatives' or agents' intentional action or gross negligence as well as in cases of culpable violation of essential contractual obligations (cardinal duties).
- (2) In the event of a culpable violation of cardinal duties we shall only be liable - except for any cases of our legal representatives' or agents' intentional action or gross negligence - for foreseeable damages which are typical for this type of contract
- (3) Our liability is limited in total to the scope of coverage provided by our business liability insurance.
- (4) In the event of a culpable violation of cardinal obligations, our liability is, in addition, limited in total to the double contract value of the respective delivery which was the cause of the damage.
- (5) Any liability of SZMF for production losses and lost profits shall be excluded.
- (6) The above-mentioned limitations of liability shall not apply to cases of injury of life, body or health and with respect to personal injury or damage on objects for personal use in accordance with the German Product Liability Act.

15. Place of Jurisdiction; Applicable Law

- (1) Notwithstanding the place of jurisdiction for measures of preliminary injunction proceedings, the place of jurisdiction for all other legal disputes, also for bills of exchange and check litigation, shall be at the location of the registered office of our company; we may, however, also sue the Customer at the courts of his general venue.
- (2) All legal relationships between us and the Buyer shall be exclusively governed by the laws of the Federal Republic of Germany as applicable for domestic parties, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods.

16. Partial Invalidity; Data Protection

- (1) These Terms and Conditions shall remain in full effect even if single parts are invalid.
- (2) Data becoming available in connection with the business relationship shall be stored in files by the companies of the Salzgitter Group and transmitted between them.