

## Terms and Conditions of Sale

for

**BGH Edelstahlwerke GmbH**

**BGH Edelstahl Freital GmbH**  
**BGH Edelstahl Lippendorf GmbH**  
**BGH Edelstahl Lugau GmbH**  
**BGH Edelstahl Siegen GmbH**  
**BGH Feindraht GmbH, Waldniel**

**BGH SL-Stahl GmbH, Isernhagen**  
**Freitaler Lagergesellschaft mbH**  
**RPS Rohstoff-, Press- und Schneidbetrieb Siegen GmbH**  
**RPS & Lente GmbH, Siegen**  
**SRG Schrott und Recycling GmbH, Siegen**

### A. General Provisions

#### I. Formation of contract

- All sales are made subject to the following terms and conditions and Seller objects to any different or additional terms or conditions contained in Buyer's purchase order or any other document submitted by Buyer. Seller's acceptance of any purchase order is expressly made conditional on Buyer's assent to these terms and conditions. Terms or conditions contained in a purchase order which in any manner purport to alter, modify, change, suspend or add to any term of condition contained in this order confirmation shall be deemed excluded from such purchase order and waived by Buyer.
- Our quotations are subject to change without notice.
- All orders by Buyer must be expressly accepted by Seller in writing in order to be deemed accepted. Silence cannot act as an acceptance. This also applies to electronically transmitted commercial confirmation letters unless the mutual transmission of electronic correspondence has been agreed to and the correspondence is sent to the expressly designated address.
- All contract related documents must be in writing; however, a qualified electronic signature is not required unless it is otherwise agreed to with the Buyer.

#### II. Terms and conditions of payment

- Full payment of the purchase price is due no later than 30 days after delivery from the factory or warehouse.
- Subject to the rights in paragraph A II 5, if it is agreed that Buyer is to take delivery within a specific period after our notification that the merchandise is ready for shipment, then we are permitted to invoice the merchandise at that time and the purchase price, in that case, will be due 30 days after the date of invoice.
- Payment shall be made without any deduction of discounts, in such a manner that we have the sum at our disposal on the date on which payment falls due. Buyer may only offset claims that are uncontested or have legal force; Buyer has a right of retention only insofar as such right is based on the same contractual relationship.
- If the time allowed for payment is exceeded, interest at the rate of 8% above the respective base rate will be charged.
- To the extent that our right to payment is endangered by subsequent events yielding a significant deterioration in financial condition, we have the right to declare due any accepted bill of exchange irrespective of maturity.
- In cases of No. 5 as well as paragraph A V 8, we can cancel any automatic deduction authorization (paragraph A V 7) and require advance payments for deliveries still outstanding.
- Buyer can avoid the legal consequences stated in of No. 5 as well as paragraph A V 8 by offering security in the amount of our jeopardized claim for payment. Should the Buyer fail to provide advance payment or appropriate security within a reasonable period of time, we have the right to cancel the contract without liability to Buyer for damages of any kind.
- The statutory provisions concerning default of payment shall remain unaffected.
- In the case of delayed payment relating to a perceptible decline in Buyer's financial condition, we also have the right to cancel the contract without prior notice.

#### III. Security

We are entitled to the usual security, adequate in kind and extent for our claims, even if such claims are conditional or limited in time.

#### IV. Group Offset

On the basis of a Group agreement, the companies listed above that use these Terms and Conditions of Sale have each given one another the following authority: if a contracting party with one of the Group companies has a claim against that company, the Group company is entitled to set off a claim of another Group company against the contracting party's claim. Accordingly, Buyer agrees that our claim for payment will be set off against any claim that Buyer has against any company listed above.

#### V. Reservation of Title

- All merchandise delivered will remain our property (merchandise subject to retention of title) until all claims are settled in full, in particular the balance of claims due to us at any given time within the framework of the commercial relationship. This also applies to future and conditional claims, e.g. claims arising from accommodation bills.
- Any machining and processing of the merchandise subject to retention of title shall be done for us as manufacturer within the meaning of § 950 BGB (German Civil Code), without putting us under any obligation. The machined and processed merchandise shall be deemed to be merchandise subject to retention of title within the meaning of No. 1 of this Section V.
- If Buyer processes, combines or mixes the merchandise subject to retention of title with any other merchandise, we are entitled to proportionate joint ownership of the new product based on the invoice value of the merchandise subject to retention of title in relation to the invoice value of the other merchandise used. If our ownership is extinguished through any combining, mixing or processing, Buyer hereby transfers to us any proprietary or expectant rights it may have in the new entity or article to the extent of the invoice value of the merchandise subject to retention of title - in the case of any processing, proportionately on the basis of the invoice value of the other merchandise used - and shall keep the new entity or product in safe custody for us free of charge. Our rights of joint ownership are deemed to be merchandise subject to retention of title within the meaning of No. 1 of this Section V.
- Buyer may resell the merchandise subject to retention of title only in the normal course of business on Buyer's normal business terms, and as long as Buyer is not in default of payment, provided that Buyer retains title to the goods and assigns to us claims that may arise from the resale, as stipulated in Nos. 5 and 6 of this Section V. Buyer is not entitled to dispose of the merchandise subject to retention of title in any other way. Use of the merchandise subject to retention of title to fulfill contracts for work and delivery of work shall also be deemed to be resale within the meaning of this Section A.V.
- Claims of Buyer arising from the resale of the merchandise subject to retention of title are hereby assigned to us. Such claims serve as security to the same extent as the merchandise subject to retention of title within the meaning of No. 1 of this Section V.
- If Buyer resells the merchandise subject to retention of title together with other merchandise, then any claims arising from the resale are hereby assigned to us proportionately on the basis of the invoice value of the merchandise subject to retention of title in relation to the invoice value of the other merchandise. In the case of any resale of merchandise in which we have joint ownership as defined in No. 3 of this Section V, a part of the claim corresponding to our share of the joint ownership shall be assigned to us.
- Buyer is entitled to collect any claims arising from any resale, unless we revoke the authorization to collect in the cases stated in Section A II 5 and A V 8. At our request, Buyer shall notify its customers immediately of the assignment to us - unless we do so ourselves - and submit to us the information and documentation required for collection. In no event is the Buyer permitted to assign the claims.
- If the Buyer has delayed payment and this threatens the collection of a not insubstantial portion of our claim, then we have the right to stop further processing of the merchandise, to repossess the merchandise and in such cases to enter the Buyer's premises. Repossession is not a cancellation of the contract.
- Buyer must notify us immediately of any seizure or other encumbrance arising from third parties.
- If the value of the existing security exceeds the secured claims by more than 10% in total, we shall, at Buyer's request, release such security as we choose.

### B. Performance of Delivery

#### I. Periods and dates for delivery

- Periods for delivery commence as of the date stated in our order confirmation, but not prior to complete clarification of all order details; the same applies to date of delivery. Delivery dates are approximate and we shall not be responsible for delays in delivery or performance due to unforeseen causes such as production outages or difficulties in timely obtaining necessary fuels, materials, parts or completing quantities.
- After Buyer fails to fulfill in due time any contractual obligations, including ancillary and secondary obligations, such as the opening of a letter of credit, the procurement of domestic or foreign certificates, the effecting of an advance payment, or the like, then we are entitled to defer the periods and dates for delivery in accordance with the requirements of our production schedule, without prejudice to our rights arising from any default on the part of Buyer.
- The date of shipment ex works shall be definitive regarding compliance with the period and dates for delivery.
- In cases of Force Majeure, the contractual obligations of both parties shall be suspended and the time periods for performance of contractual obligations shall be correspondingly tolled; events of Force Majeure include but are not limited to strikes or other labor disturbances (include those involving the businesses of third parties), delays in transportation, repairs to equipment, Government actions and other circumstances not reasonably within the control of either party. A party claiming an event of Force Majeure shall notify the other party

without delay. Six weeks after receipt of such notification at the earliest, both parties have the right to cancel the contract.

- In the event of late delivery, the Buyer may exercise the rights in §§ 281, 323 BGB only after setting a reasonable period for delivery, which - to the extent the Buyer can cancel the contract if, with respect to the declaration that Buyer rejects acceptance of performance after expiration of the period; upon successful expiration of the period, any claim for performance is excluded.
- In the case of late delivery, we shall be liable for damages proved by Buyer according to the conditions in section C. We will promptly inform the Buyer of the estimated length of the delay in delivery. After notification of the length of the delay in delivery, the Buyer shall promptly notify us of the estimated damages for delay. If the estimated damages for delay exceed 20% of the value of the merchandise subject to the delay, the Buyer is required to promptly make a purchase of substitute goods ("cover"), or, as the case may be, take advantage of the cover possibilities demonstrated by us with cancellation of the contract for the merchandise subject to the delivery delay; the proven additional costs from the cover transaction and the proven delay damages for the interim period shall be reimbursed by us. If the Buyer does not fulfill its damage mitigation obligations according to the previous provision, then our liability for proven delay damages is limited to 50% of the value of the affected merchandise.
- The Buyer can cancel the contract without prior notice if it is not possible for us to finally make the entire delivery before transfer of risk. In addition, the Buyer can cancel the contract if, with respect to an order, a portion of the delivery is not possible and the Buyer has a justified interest in rejecting the partial delivery. If this is not the case, then the Buyer must pay the contract price with respect to the partial delivery. The same applies to inability on our part. In addition, section C applies.

#### II. Dimensions, weight, quality

Deviations from dimensions, weight and quality are admissible within the limits of DIN or the established practice. Weight is determined on our calibrated scales and is definitive for invoicing. Evidence of weight shall be given by presentation of the weighing record. Where it is not customary for items to be weighed individually, the total weight of the consignment shall apply in each case. Differences with respect to the calculated weight of individual items shall be apportioned among those individual items.

#### III. Shipment, packing and passing of risk

- We shall designate the forwarding agent or carrier.
- If the loading or forwarding of the merchandise is delayed for any reason for which Buyer is responsible, we are entitled, at the expense and risk of Buyer, to store the merchandise at our sole discretion, to take all measures regarded as suitable for the preservation of the merchandise, and to invoice the merchandise as delivered. The same applies if merchandise notified as ready for shipment is not called for within four days. The statutory provisions concerning default in taking deliver remain unaffected.
- Where customary, we shall deliver the merchandise packed and protected against rust; Buyer shall carry the cost. Packing, protection and transport materials will not be taken back. Packing or special protection exceeding that necessary for transport, e.g., for long-term holding or warehousing, require an express agreement.
- In the event of any damage occurring during transport, Buyer must immediately arrange for the facts to be established by the appropriate agencies.
- Risk shall pass to Buyer when the merchandise is handed over to the forwarding agent or the carrier, but in no event later than when the merchandise leaves the works or the warehouse.

#### IV. Warranty

- The merchandise conforms to the contract if, at the time of passing of risk, the merchandise does not substantially deviate from the agreed to specifications; conformance of the merchandise to the contract and absence of defect shall be measured exclusively according to the express agreements concerning quality and quantity of the ordered merchandise. Responsibility for a specific use or a specific purpose will only be undertaken to the extent that this is expressly agreed to; otherwise the Buyer exclusively carries the risk of suitability for a particular use or purpose. We are not responsible for deterioration, loss or inappropriate handling of the merchandise after passing of risk.
- The contents of the agreed to specifications and a general agreed to use do not form a guarantee; the undertaking of a guarantee requires an express written agreement.
- The Buyer must inspect delivered merchandise promptly after receipt. Claims for defects or problems can be made only if the Buyer promptly notified the seller in writing of the problem or defect; the Buyer must notify the seller of hidden defects promptly after discovery. After performance of an agreed to inspection, which could have discovered any defects, all claims for defects shall be excluded.
- Promptly after making any complaints, the Buyer must give us the opportunity to inspect the complained of merchandise; upon request, the complained of merchandise or a sample thereof shall be made available to us at our own expense. With respect to unsubstantiated complaints, we reserve the right to charge the Buyer with any freight and transportation costs, as well as the expenses related to inspection.
- For any merchandise that has been sold as downgraded material, e.g., so-called II-a material, Buyer has no rights under warranty regarding defects of which Buyer has been made aware or such defect as would be normal to expect.
- In case of product defect, BUYER'S EXCLUSIVE REMEDY SHALL BE LIMITED TO OUR REPLACING THE MERCHANDISE THAT DOES NOT CONFORM TO CONTRACT OR; AT OUR OPTION - TAKING ACCOUNT OF THE BUYER'S WISHES -, REFUNDING THE PURCHASE PRICE. If we do not provide this remedy within a reasonable period of time, the Buyer can establish a reasonable period of time for performance, after which the Buyer may either reduce the purchase price or cancel the contract; any further remedies are excluded. Section C remains unaffected.
- With respect to defects in title, we shall have the right to remedy the defect within two weeks after receipt of the merchandise. Otherwise, the second sentence of No. 6 applies.
- All claims related to nonconforming delivery, except in cases of specific intent, must be brought within one year of delivery. The statutory limitations period for merchandise that according to its normal use is designated for building construction and has caused such to be defective shall remain unaffected; remedial performance or replacement delivery shall not cause the limitations period to commence anew.
- Buyer's counterclaims against us pursuant to § 478 BGB are limited to the statutory extent of the claims made against Buyer by third parties and require that the Buyer has complied with its notification obligations to us pursuant to § 377 HGB.

### C. General Limitations on Liability

- Insofar as these General Conditions provide no other regulation, we are liable for damages due to breach of contractual or extra-contractual obligations only in cases of specific intent or gross negligence of our legal representatives or our senior executives and in cases of fault in breach of material contractual obligations. In case of fault in breach of material contractual obligations, we are liable only for foreseeable damage typical for this type of contract, except in cases of specific intent or gross negligence of our legal representatives or senior executives. WE SHALL HAVE NO LIABILITY FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES.
- The previous limitation of liability does not apply to bodily injury or death.
- This provision does not affect claims for personal injuries or damage to privately used property in accordance with product liability law.

### D. Miscellaneous

#### I. Proof of Export

If a Buyer who is resident outside the Federal Republic of Germany (extra-territorial Buyer), or Buyer's representative agent, collects any merchandise and forwards or ships it to a foreign country, Buyer must furnish us with any export certificate that may be required for tax purposes. If such a certificate is not furnished, Buyer shall pay the rate of value added tax on the invoice amount applicable to deliveries made within the Federal Republic of Germany.

#### II. Applicable Law

This agreement shall be governed by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (April 11, 1980) is excluded.

#### III. Place of performance and jurisdiction

Place of performance and jurisdiction for both parties is the jurisdiction in which Seller's facility is located and its responsible court. We are also permitted to bring suit against the Buyer in the jurisdiction where Buyer is located.

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