General Terms and Conditions of Delivery

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All our deliveries and services shall be based exclusively on the terms and conditions of our respective order confirmation and on these General Terms and Conditions of Delivery. Other terms and conditions shall not form part of the contract. The acceptance of our delivery or service shall be deemed to be the acceptance of our terms and conditions.

These General Terms and Conditions of Delivery shall also apply to all future deliveries and services to the customer, irrespective of whether these General Terms and Conditions of Delivery are expressly referred to in the context of such deliveries or services.

1. Orders, conclusion of contract

a Our offers are non-binding (subject to change). A contract for the delivery of goods or the provision of services shall only be concluded with us if we accept an order in writing, deliver ordered goods or provide ordered services.

b We are entitled to accept orders within two weeks from the order date. For this period the customer shall be bound to its order.

2. Price, payment, security

a Unless expressly agreed otherwise in writing, prices are to be paid in Euro and are net plus the applicable value added tax and the costs of transport and packaging. All taxes and/or other charges (e.g. import duties) incurred for our deliveries and services in the country of receipt shall be borne by the customer.
In the event of a significant change in our production costs, we are entitled to make an appropriate price adjustment. Metal price fixations cannot be changed after fixation.

b Our performance of the contract shall be subject to the proviso – without prejudice to Clause 12 of these General Terms and Conditions of Delivery – that there are no impediments or unreasonable difficulties to our performance due to domestic or foreign regulations of foreign trade law and that our performance of the contract is not rendered impossible, uneconomical or substantially more difficult by customs regulations of the country of import.

c Unless expressly agreed otherwise in writing, payments for deliveries and services shall be due 14 days after the invoice date. The date of receipt of payment shall be decisive for compliance with any payment period. We are entitled to send invoices also in electronic form.
Costs and expenses shall be borne by the customer. We accept bills of exchange only after prior agreement and on account of performance.
We are entitled to determine against which of our claims incoming payments shall be offset. The crediting of bills of exchange and checks shall be subject to encashment.

d If the customer does not pay by the due date, he shall be in default. From this point in time, we shall be entitled to charge default interest at a rate of 10% p.a. of the amount with which the customer is in default.

e Set-off and retention by the customer are only permissible if the counterclaim has been established with res judicata effect or is undisputed.

f We are entitled to assign claims against the customer to third parties.

g If the performance of the contract is jeopardized by the customer's inability to pay, which is particularly the case if the credit limit of our trade credit insurance for the customer is cancelled or significantly reduced, we may refuse our delivery and/or performance and revoke all payment terms granted and demand advance payment as security. In addition, we are entitled to withdraw from the contract.

3. Metal contracts

a If a customer orders metal at the respective current metal price at the metal price valid at the time for the purpose of subsequent processing from us („metal contract"), the contract shall be concluded upon our contract confirmation, in which we confirm the type, quantity, price and due date of the metal price fixation.

b Within the disposition period specified in our contract confirmation, the customer is obliged to order the desired product for delivery within the acceptance period; such order shall contain the product specifications (product, quantity, delivery time). The price for the products shall consist of the metal price specified in the metal contract and the processing price valid at the time the order is placed.

c After expiry of the acceptance period, we are entitled to a) charge a price surcharge of 1% per month or part thereof on the quantity not ordered and b) invoice the customer for immediate payment of the quantities not ordered, including, but not limited to, accrued interest. The quantity of metal paid for will be credited to the existing or yet to be opened metal account (conversion account) in the ratio 1 : 1.

Should the processing via a metal account not be possible, for example in the case of certain foreign markets or tubes for domestic applications, or should it not correspond to our legitimate interests, we shall be entitled, after expiry of the acceptance period, to request the customer to place the order within seven days by means of a warning letter. If the customer also does not place a respective order within this period, we are entitled to cancel the metal price fixation and to invoice the customer for the difference between the fixed price set out in the contract confirmation and the metal price corresponding to the LME market price on the date of cancellation of the order, the accrued interest and any costs incurred.

d In the event that we are required to provide security to our broker with respect to the metal contract, the customer shall be obliged to provide us with such security in the same amount and at the same time.

e If, during the term of a metal contract, insolvency proceedings or similar proceedings are opened against the assets of the customer and the insolvency administrator decides against the further performance of the contract, all our claims for payment of metal not yet delivered and/or not yet transferred shall become due retroactively as of the date on which insolvency proceedings were opened.

4. Metal cover

a The metal cover shall be arranged by the customer with us at the latest 6 weeks before the confirmed delivery date in a suitable form (metal contracts, full price transaction, metal account) in the amount of the intended delivery quantity. Otherwise, we shall be entitled to fix the corresponding metal prices independently for and at the expense of the customer and to invoice the customer for these fixations at the time of delivery.

b Only our measurements shall be decisive for determining the weights of the metal provided to us for tolling. In the event of deviations from the Customer's specifications, we shall prove the weighing results with appropriate documents.

c We reserve the right to offset claims with which the customer is in arrears against his credit balance from metal delivered to us at the market price that applies at that time.

d The customer guarantees a moisture content of the metal provided to us which is within the scope of the relevant DIN or EN standards. In the event of higher moisture, a corresponding weight deduction shall be made.

5. Transfer of risk, delivery, standards

a The risk of loss and deterioration of the goods shall pass to the Customer at the latest: a) if we are obliged to transport the goods, at the time the goods leave our supplying plant, and b) if we are not obliged to transport the goods, at the time the goods are notified as ready for collection or dispatch. Insofar as acceptance is to take place, the agreed acceptance date shall be decisive – except in the case of justified refusal of acceptance; insofar as such date has not been agreed, our notification that the goods and/or services are ready for acceptance shall be decisive.

b We are entitled to partial deliveries. If we are obliged to transport the goods, we may determine the forwarding agent, carrier and shipping route.

c Unless expressly agreed otherwise in writing, deliveries shall be made EXW (Incoterms 2020), with the place of delivery being the location of our supplying plant.

d In case of an intra-community transport of goods, where we are not obliged to transport, we will send the customer the form "confirmation of receipt" which must be completed by customer in full and returned to us within 14 days from the day of receipt. If we do not receive the completed confirmation of receipt within this period, the customer shall pay to us the current value added tax applicable at the respective good's place of origin.

e Public, national or international standards shall only apply if they are expressly stated as being applicable in our written order confirmation. In this case, the version of the standard valid at the time of conclusion of the contract shall apply.

6. Time of delivery, hindrance of delivery, delay

a Delivery periods and times are not legally binding but shall always be approximate, non-binding indications for the time of delivery ex works or ex warehouse.

b Our delivery obligation shall be subject to timely and correct delivery to us by our suppliers, in particular in the case of subcontracting, unless we are responsible for the customer's delayed delivery or failure to deliver.

c Force majeure, such as raw material and energy shortages, traffic bottlenecks, operational disruptions, labor disputes, riots, war, armed conflicts, civil war, terrorism, revolution, natural disasters, epidemics, pandemics (which includes, for example the Covid19 pandemic and the restrictions based on it, such as travel restrictions, border closures, transport restrictions or delays and plant closures),measures by public authorities and other events which are beyond our control and which make it substantially more difficult or impossible for us to deliver or perform an obligation , in whole or in part, shall release us from our obligations for the duration of the disruption and to the extent of its effect. This shall also apply if we are already in default at the time of the occurrence of the force majeure event. In such case, our delivery or performance time shall be extended by a period corresponding to the duration of the disruption.

d We shall in any case only be in default with an obligation under the contract if, after the due date of the respective obligation, we do not perform such obligation within a reasonable grace period following a written warning letter from the customer and such non-performance is due to reasons for which are attributable to us . A further prerequisite is that the customer is not itself in default with an obligation arising from the business relationship.

7. Retention of title

a Supplied goods shall remain our property until the definitive settlement of all current and future claims arising from or in connection with the business relationship with the customer.

b The processing of our goods by the customer shall be carried out on behalf of us, without any obligations arising for us, and we shall acquire ownership of the newly created goods. If the goods are processed together with other materials, we shall acquire co-ownership based on the ratio of the invoice value of our goods to that of the other materials.
If our goods are combined or mixed with goods of the customer and the customer's goods are to be considered the main goods, co-ownership of the main goods shall pass to us based on the ratio of the invoice value of our goods to the invoice value – or in the absence of such – to the market value of the main goods.
In such cases, the customer shall be deemed to be the custodian of the concerned goods.

c All claims of the customer arising from the sale of those goods to which we hold ownership rights are hereby assigned to us by the customer as security to the extent of our ownership share in the sold goods.

d The customer shall store the goods owned by us carefully, in accordance with our instructions, free of charge, separately from goods of third parties and clearly marked as our property.

e The customer is entitled to dispose of the goods which are our property in the ordinary course of business and to collect the receivables assigned to us as long as the customer duly complies with his obligations arising from the business relationship with us, such as, for example, payment terms.

The customer shall return to us goods which are our property at any time, without delay and at its own expense upon our request; for this purpose, we shall neither have to terminate the contract nor set a grace period. We are entitled to enter the customer's premises in order to take possession of these goods. In addition, we are entitled to prohibit the resale, processing and removal of the delivered goods, as well as to revoke the authorization to collect claims and to collect the claims assigned to us on our own.

f At our request, the customer shall provide us with all necessary information on the goods which are our property and on the claims assigned to us and shall inform his customers of the assignment.

g If the value of the goods and claims retained or assigned as security by or to us exceeds our claims against the customer by more than 20 %, we shall release such securities of our choice to this extent at the request of the customer.

h If the retention of title to goods supplied by us is not effective under applicable law, we shall be entitled to reserve other rights to the goods in order to secure our claims. The customer is obliged to cooperate in such measures.

i The customer must refrain from pledging or other actions that impair our ownership in or other rights to the goods and, if such actions are to be expected by third parties, must avert them. The customer shall notify us without delay of any such impairing acts and shall provide us with the information and documents necessary to defend our rights. The customer shall reimburse us for the costs incurred by us in order to restore the original legal position, if and insofar we cannot recover these costs from the third party causing the impairment.

8. Deviations, no warranty, technical advice

a A deviation in weight, quantity or specification of the supplied goods from our specifications in the delivery bill and invoice must be proven by the customer.

b We shall be permitted to deliver up to 10% more or less than the agreed weights, quantities and dimensions, unless this conflicts with specifically agreed standards (Section 5. e.). For the delivery of goods, we reserve the right to material- or production-related deviations in diameter, weight or structure; customary excess- or short-lengths are permitted.

c Descriptions of the scope of delivery, dimensions, weights, materials, appearances and performances merely serve to describe the goods and, like references to standards, material sheets, test certificates etc., do not constitute a guarantee. Rather a guarantee must be expressly declared by us in writing using this term in order to be legally binding. This shall also apply in the event of the agreement of standards (item 5. e.), which therefore do not constitute a guarantee in themselves.

d When providing technical advice, we will use the level of care as applied to internal affairs. Technical advice is in any case non-binding and does not release the customer from own tests and trials. The customer shall be solely responsible for compliance with statutory and official regulations when using our goods.

9. Warranty

a The customer must inspect the goods immediately after delivery for transport damage, obvious material defects, incorrect deliveries and shortfalls and notify us in writing of any complaints immediately and in any event no later than 2 weeks after delivery of the goods. If a defect which is not recognizable during the aforementioned inspection becomes apparent at a later date, it must be reported in writing without delay, but no later than 2 weeks after discovery; the customer shall cease any processing or treatment immediately.

If the customer fails to notify us of a defect in due time, the goods shall be deemed to have been approved in respect of the defect. The same shall apply if the customer does not enable us to carry out a proper inspection of a notified defect immediately after our request.
Upon the customer's processing of the goods, we may assume that the goods are suitable for the customer's use.

b In the case of legal defects or defects in material or workmanship, we are entitled to the following in addition to the statutory provisions:
We are entitled to rectify the defect twice. We may, at our discretion, remedy the defect or deliver a defect-free good. If the nature of the good or the defect or the other circumstances indicate that the rectification has not failed after our second rectification attempt and that this is reasonable for the customer, we shall be entitled to make further rectification attempts. If the rectification has failed, the customer's only remedy is to terminate the contract.

c The customer may not derive any rights from defectives regarding a partial delivery with regard to the remaining partial deliveries.

d The warranty period for defects shall be 12 months after delivery of the goods and/or performance of the services. For defective goods replaced or repaired within this period, the additional warranty period shall be 3 months from the replacement or repair, but in any event limited to a period of 15 months from delivery of the replaced or repaired goods.

10. Limitation of liability

a For damages not caused to the goods themselves, we shall only be liable – irrespective of the legal basis – as follows
- in case of intent,
- in the event of gross negligence on the part of our shareholders, members of our governing bodies or our executive employees,
- in case of culpable injury to life, body or health,
- in case of defects which we have fraudulently concealed or with regard to which we have assumed a guarantee for the quality of a product,
- in the event of defects in the goods, insofar as we are liable for personal injury or property damage to privately used objects in accordance with mandatory product liability and the customer is actually held liable accordingly.

In the event of culpable breach of material contractual obligations (these are obligations the fulfillment of which is essential to the proper performance of the contract and compliance with which the customer may regularly rely on), we shall also be liable in the event of gross negligence on the part of non-executive employees and in the event of minor negligence; in the latter case, however, our liability shall be limited to reasonably foreseeable damage typical of the contract.

b Any further claims for damages or reimbursement of expenses – irrespective of the legal basis – are excluded. Insofar as liability for damages or reimbursement of expenses against us is excluded or limited, this shall also apply with regard to personal liability for damages on the part of our executive bodies and employees.

c The customer shall be obliged to take steps to prevent damage immediately after discovery of a defect. With the notice of defect, the customer shall also state the amount of damage expected by him, if any. Immediately after the occurrence of circumstances which may influence the amount of damage, the Customer shall notify us thereof in writing. If the customer fails to do so, we shall not be obliged to reimburse any further damages.

11. Third-party property rights, rights to tools, confidentiality, data protection

a If the property rights of third parties are infringed due to deliveries of goods or the performance of services which are based on drawings or other information that has been provided by the customer, the customer shall indemnify us and hold us harmless from and against all damages, claims and costs.

b The customer does not acquire any rights to tooling through full or partial payment of tooling costs. Tooling shall rather remain at all times and in any event our property.

c Information contained in our documents, e.g. drawings, samples, calculations, shall not be made available to third parties unless it is used for the intended purpose or we have granted our prior written consent.

d The customer shall not be entitled to disassemble, reverse engineer, analyze or reconstruct the goods or to derive any properties therefrom for new products.

e In the context of the contractual relationship, personal data may also be processed. Information on data protection for customers, which states in particular the purposes of processing and your rights in this regard, is available upon request from us.

12. Export and re-export restrictions

a If the customer intends to export or transfer goods to a country or territory against which the United Nations, the European Union, the United States of America, Singapore or China have issued or put into force an embargo or other export or re-export restrictions, or to use the goods for such a country or territory, the customer shall be obliged to notify us thereof in writing prior to the conclusion of the contract.

b If the customer makes a corresponding decision after conclusion of the contract, he is likewise obliged to inform us of this in writing. Such export or transfer is only permitted with our written consent.

c In addition, the customer warrants that it will comply with the relevant export control regulations and embargos in force and possible further sanctions, in particular in Germany, the European Union, as well as the United Nations, the United States of America, Singapore, China and further extraterritorially applicable regulations.

d If the customer further sells on the goods, it shall ensure by means of corresponding contractual provisions with its customers that they also submit to the obligations set out in this section 12. Furthermore, it shall ensure by means of corresponding contractual agreements with its customers that these obligations are also contractually agreed in the further possible supply chain up to the end customer.

e If the customer violates any provision set out in this section 12, we shall be entitled to withdraw from the contract with immediate effect without the customer being entitled to any compensation claims as a result.

13. Place of performance, place of jurisdiction

a The place of performance for deliveries of goods and the performance of services is the location of our respective supplying plant. The place of performance for payments is our registered address.

b For disputes arising from or in connection with a contract, the courts at our registered address shall have exclusive jurisdiction. However, we shall also be entitled, at our sole discretion, to bring claims at the customer's registered address.

14. Applicable law

The contract and its performance shall be governed exclusively by the laws of Germany, excluding its private international law and the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980.