

General Terms and Conditions of Sale and Delivery of the company

Westfälische Metall-Locherei Franz Fahl GmbH

(Status: 10/2019)

Area of application:

in dealings with

- Entrepreneurs, Section 14 BGB (German Civil Code);
- legal persons under public law/special public assets in accordance with Section 310 BGB

hereinafter jointly referred to as the “Buyer”.

I. General

1. These conditions (and contractual agreements that may be entered into separately) form the basis for all deliveries and services and also apply to all future business relations, including if they are not expressly agreed upon again.
2. The Buyer’s (purchasing) conditions to the contrary that are not expressly acknowledged in writing shall not be deemed the content of the contract in the case of acceptance of the order either and shall not apply tacitly. By way of placing an order the Buyer acknowledges these General Terms and Conditions of Sale and Delivery.
3. These conditions also apply to all future business transactions entered into with the Buyer provided they involve legal transactions of a similar kind and updated conditions do not apply.

II. Offers and entering into contracts

1. All offers are subject to change without notice and are non-binding provided nothing to the contrary is agreed upon in writing.
2. In the absence of a separate agreement, a contract shall be brought about by way of the Supplier’s written order confirmation. Where an order is to be considered an offer (Section 145 BGB), this can be accepted within 2 weeks.
3. Orders have binding force for the Buyer. Solely the written order confirmation shall be authoritative for the acceptance, scope and performance of the delivery provided the Buyer does not object in writing without delay. This applies, in particular, to verbal orders. Offers that amend or supplement orders shall therefore similarly be subject to written confirmation. Agreements, assurances, supplementary information or subsidiary agreements entered into or made by telegram, telephone, e-mail or verbally shall also be subject to written confirmation in order to be deemed valid.
4. The documents that are part of the offer state approximate values provided they are not stated as having binding force. Ownership rights and copyrights are reserved for all documents issued to the Buyer in conjunction with the order such as drawings, diagrams, calculations, cost estimates and technical picture material. They may not be disclosed to third parties without written approval. Such documents are to be returned in the event that a contract is not brought about. On request they are also to be surrendered if they are no longer required by the Buyer during the course of ordinary business.

5. Design variations that are customary in the market (e.g. as a result of technical progress) and do not have a detrimental effect on purpose of use (e.g. colour variations or form changes) are reserved.
6. Quality and measurements are determined in accordance with the DIN standards or material data sheets. Where DIN standards or material data sheets are not available or in place, the corresponding Euro standards shall apply and in the absence of these the customary practice shall apply.
7. Without an express agreement, no special surface quality of the basic material, in particular grease-free, is required.

III. Prices and payments

1. In the absence of a separate agreement, the prices stated in the order confirmation are to be understood as ex works and include loading but exclude packaging, unloading and customs duties. Turnover tax in the respective, statutory amount is to be added to the prices. On request, transport insurance can be taken out to cover the delivery. The costs shall be borne by the Buyer.
2. As a general rule, the goods shall be made available unpacked and without corrosion protection. Packaging or protective measures shall only be provided/adopted at the Buyer's express request. Such measures or packaging shall be charged at cost price. Complaints regarding inappropriate packaging are excluded.
3. In the absence of a separate agreement, amounts are to be transferred to the stated business bank account as follows:

within 30 days following the invoice date without any deductions or within 10 days at a 2% trade discount. Payments for hired work are to be made immediately without deductions.
4. The prices valid on the delivery day are authoritative for the pricing provided no agreement has been entered into regarding fixed prices. Reasonable and acceptable price changes are reserved regarding changed wage, material and distribution costs for deliveries that are made 6 months or later after entering into a contract, and in the event of considerable exchange rate fluctuations.
5. Default interest shall be charged at 9 percentage points above the base-lending rate in accordance with Section 288, sub-section 2, BGB. We reserve the right to assert a claim for specific damage caused by delay.
6. The Buyer shall only be entitled to withhold payments or set off using counter-claims insofar as the Buyer's counter-claims are undisputed or have become res judicata. Warranty claims that are lodged do not impede the due date of our claim. If it becomes clear after entering into the contract that our claim for counter-performance is jeopardised as a result of lacking inability to pay, the immediate provision of security or payment (Section 321 BGB) may be requested.
7. The right shall remain in place to secure deliveries via credit insurance and make available to the insurer the Buyer's data and the order required in that respect.
8. In the case of doubt, call off orders are to be called off at the latest within one year after an order is placed. If the call-off order is not accepted in full, the Supplier shall have the right to request a minimum quantity surcharge. In the case of ongoing delivery divisions, the Buyer must provide notification

of the envisaged phase out of a part as soon as possible – at least however 6 months prior to the phase out. Otherwise, the Buyer is to provide compensation for pre-planned material and production costs.

IV. Delivery periods, default in delivery

1. Any details about delivery times are only approximate, and are therefore non-binding. The date of the order confirmation is authoritative for the start of the delivery time provided nothing to the contrary is agreed upon (e.g. from receipt of payment of the advance payment). Compliance with the delivery time is conditional on the fact that all commercial and technical matters between the contracting parties have been clarified, and the Buyer has honoured all its obligations such as providing all the necessary certificates or licenses or making an advance payment. If this is not the case, the delivery time shall be extended accordingly. In the event of failure to comply with the delivery time that is the Supplier's responsibility, the Buyer may request, following expiry of the non-binding stated delivery date, performance in writing and for its part set a reasonable delivery period which, however, must be at least 4 weeks.
2. Compliance with a stated delivery period is subject to correct and timely self-supply. Notification shall be given as soon as possible of delivery delays once knowledge of such delays is gained.
3. The delivery time shall be extended accordingly – including during default in delivery – for example in the event of force majeure, measures as part of industrial action, a lack of energy or other events that are beyond the Supplier's sphere of influence. The supply obligations shall be suspended for the duration of the disruption. The Buyer shall be notified as soon as possible of the start and end of such hindrances. Claims for damages are excluded.
4. In the case of subsequent amendments to the contract that may have an effect on the delivery period, the delivery period shall be extended by a reasonable period.
5. The delivery period shall be deemed complied with if the delivery item has left the Supplier's plant, or notification of readiness for dispatch is given, by expiry of the delivery period. Insofar as acceptance applies, the acceptance date shall be authoritative, alternatively notification of readiness for acceptance given to the Buyer – apart from cases of justified refusal to accept.
6. If shipping, or the acceptance, is delayed at the Buyer's request for reasons that are the Buyer's responsibility, the Buyer shall be charged for the costs arising as a result of the storage, starting one month following notification of readiness to deliver, in the case of storage at the Supplier's plant at least, however, 0.5 % of the invoice amount for each month. The Supplier is also entitled, after setting and the expiry in vain of a reasonable period, to otherwise dispose of the delivery item and thereupon supply the Buyer by way of an appropriately extended period.
7. If the Buyer sustains damage as a result of the default in delivery, the Buyer shall be entitled to request flat-rate compensation for default by way of exclusion of further-reaching claims for damages. It shall be 0.5 % of the value of the part of the overall delivery that cannot be used in good time or not as per agreement, overall however at most 5 %, for each week that lapses in which the default applies.
8. The Buyer shall review and acknowledge receipt of the delivery documents. Where applicable, objections are to be made without delay in writing. Otherwise the delivery shall be deemed acknowledged.

V. Right of withdrawal

1. If the Buyer sets a period for performance following the due date – with consideration given to the statutory exceptional cases – and if the period is not honoured, the Buyer shall be entitled to withdraw as part of the statutory requirements. The Buyer undertakes, at the Supplier's request, to state whether or not it intends to make use of its right of withdrawal. In other respects, Section IX applies.
2. The Buyer may withdraw from the contract without setting a period if the entire performance ultimately becomes impossible prior to the passing of risk. In addition, the Buyer may withdraw from the contract if, in the case of an order, performing part of a delivery becomes impossible and the Buyer has a justified interest in rejecting the partial delivery. If this is not the case, the Buyer is to pay the contractual price attributable to the partial delivery. The same applies in the event of inability to perform. If the impossibility, or inability to perform, occurs during a default in acceptance, or if the Buyer is solely or largely responsible for these circumstances, the Buyer continues to undertake to provide counter-performance.
3. If honouring the contractual delivery obligations is temporarily hindered by the occurrence of unforeseeable circumstances, in particular "force majeure" – regardless of applying acceptable care in accordance with the circumstances of the case, irrespective of whether or not the hindrances have occurred at the plant or at suppliers' premises (e.g. operational disruptions, strikes/lock-outs, delays in delivery of key raw materials, lack of energy or breakdown in the means of transport etc.), the delivery obligation shall cease to apply without the Buyer being able to claim for damages. In that case, the Buyer shall only be entitled to withdraw from the contract if the delay is unacceptable for the Buyer.

VI. Passing of risk, acceptance and shipping

1. Risk shall pass to the Buyer at the start of loading the delivery item, including in the case of partial deliveries or if the Supplier has assumed other services such as shipping costs or delivery and set-up. Insofar as acceptance has been agreed upon, it shall be authoritative for the passing of risk. It must be carried out without delay on the acceptance date, or following notification of readiness for acceptance (within 7 workdays). The Buyer may not refuse acceptance on the grounds of an insignificant defect. If the Buyer fails to accept or refuses to accept irrespective of the setting of an additional period, claims for damages may be asserted for non-performance and/or withdrawal from the contract in full or in part may apply.
2. If the shipping or acceptance are delayed or are not provided as a result of circumstances that are not the Supplier's responsibility, risk shall pass to the Buyer from the day of notification of readiness for shipping or acceptance. From the same time, the Buyer shall be liable for damage that third parties may sustain. An assurance is made to enter into the insurance policies, at the Buyer's cost, requested by the Buyer.
3. Shipping shall at all times apply at the Buyer's risk, including in the case of deliveries without charge and in the event of transportation by way of plant vehicles. In the absence of instructions issued by the Buyer, the shipping route, shipping type and the means of shipping shall apply at the Supplier's discretion by way of exclusion of liability and without guaranteeing the most cost-effective transport.
4. Partial deliveries are permitted provided these are acceptable for the Buyer.

VII. Warranty claims/guarantee

1. The Buyer is to inspect the goods without delay following delivery, and in that respect similarly without delay (within 1 week following acceptance) provide written notification of identified defects and lodge a complaint. The obligations to inspect and provide notification of defects are based on Section 377 HGB (German Commercial Code). The Supplier shall be granted the opportunity to record and review the defects about which a complaint has been lodged. The delivery item shall initially not be altered/processed/surrendered to third parties.

Insofar as measures are adopted to minimise damage or enter into negotiations regarding a defect for which notification has been provided, this shall neither be deemed an acknowledgement of or waiving an objection to a fault for which notification is not provided in good time.

2. Parts that prove to be faulty as a result of circumstance that occurs prior to the passing of risk shall be subsequently improved at the Supplier's discretion, or shall be replaced with parts free of faults. Replaced parts shall become the Supplier's property. In the case of a replacement delivery, the Buyer is to return the faulty item to the Supplier in accordance with the statutory requirements.
3. Following an agreement, the Buyer is to make available the necessary time and opportunity to perform any required improvements and replacement deliveries in the case of a justified notification of defects. Otherwise, the Supplier shall be released from the liability for the resulting consequences. Only in urgent cases to ward off disproportionately serious damage, or risk to operational safety, whereby the Supplier is to be notified immediately, shall the Buyer be entitled to rectify the defect itself or make arrangements to have it rectified by a third party and request compensation for the required expenses. Where items are subsequently improved or replacement deliveries are provided as part of the guarantee, this shall not result in a new start of the warranty obligation. Multiple subsequent improvements are permitted.
4. Insofar as a complaint proves justified, the Supplier shall only carry the costs that apply as a result of the subsequent improvement or replacement delivery insofar as such costs do not lead to a disproportionately high burden. Of the direct costs that arise as a result of the subsequent improvement or the replacement, we shall carry the cost of the replacement, including the shipping to the originally agreed place of delivery. Potential costs of bringing an item to a location other than the delivery location shall be borne by the Buyer.
5. The expenses required for the review and subsequent performance, in particular, transportation, transport, work and material costs and, where applicable, dismantling and installation costs, shall be borne or compensated by the Supplier in accordance with the statutory regulation if a defect actually applies. However, the Supplier reserves the right in the case of subsequent improvement to perform dismantling and installation that may be necessary. The Supplier shall only be required to pay the dismantling and installation costs if the Supplier allows a reasonable period set by the Buyer to lapse in vain or if the setting of a period can be dispensed with. If a defect does not actually apply, the Supplier may request that the Buyer provide compensation for the costs resulting from the unjustified request for rectification of a defect (in particular review and transport costs) unless the lacking faulty nature was unrecognisable for the Buyer.
6. As part of the statutory requirements, the Buyer shall be entitled to withdraw from the contract if the Supplier allows a reasonable period set for us for the subsequent improvement or replacement regarding a material defect to lapse in vain – with

consideration given to the statutory exceptional cases. If merely an insignificant defect applies, the Buyer shall merely be entitled to reduce the contract price. Otherwise, the right to reduce the contractual price shall remain excluded. Additional claims shall be determined in accordance with Section IX. of these conditions.

7. If the Buyer justifiably withdraws from the contract or justifiably requests compensatory damages instead of performance, the Supplier undertakes to dismantle and remove the supplied, faulty, item insofar as the Buyer had already installed it. On request, the Buyer perform the dismantling work. In such a case the Supplier shall compensate the Buyer for the costs incurred in that respect only, however, insofar as they are the Buyer's costs without profit. If the Buyer commissions a third party company to perform the dismantling and/or removal, the costs arising in this respect shall only be compensated if the Buyer has previously set a reasonable additional period for the Supplier and it lapses in vain unless the subsequent period can be dispensed with in accordance with the statutory requirements.
8. The Supplier does not, in particular, provide any guarantee in the following cases: usefulness of the goods for the purpose intended by the Buyer unless the usefulness was expressly confirmed as per agreement; unsuitable or inappropriate use; faulty assembly or processing/maintenance by the Buyer or third parties; installation of external parties, natural wear-and-tear; excessive use/wear-and-tear (all moving parts, actuation, tools; standard is one-shift operation), faulty or negligent handling; chemical, electro-chemical or mechanical influences provided they are not our responsibility. Variations in terms of weight, colour, measurements and quantity that are customary in the trade do not constitute defects.
9. Characteristics shall only be deemed warranted if they are expressly stated as such in the contract. No guarantee is provided for information, legal advice and references regarding potential performance features, areas of application and application options and the like unless these have been assured in writing. Verbal details and details set out in the documents do not contain any assurances. They are merely intended as for the specification. Where the materials to be used by the Supplier are specified in the contract, this only guarantees the specification and not the suitability of the materials for the contractual purpose. The Supplier only undertakes to provide references in the case of the obvious unsuitability of materials. The Buyer is to obtain information about potential export provisions and government regulations.
10. In the case of used goods, a guarantee is excluded unless the Supplier maliciously or gross negligently conceals defects.
11. The Buyer's claims under a right of recourse against the Supplier shall only apply insofar as the Buyer has not entered into agreements with its customer that extend beyond the statutory warranty claims.
12. If the Buyer, or a third party commissioned by the Buyer, makes inappropriate subsequent improvements, the Supplier shall not assume any liability for the resulting consequences. The same applies to alterations made to the delivery item without our prior approval.
13. If using the delivery item violates industrial proprietary rights or copyrights at home, the Supplier shall, at its cost, as a matter of principle bring about the right for further use or modify the delivery item in a manner that is acceptable for the Buyer such that the violation of the proprietary right no longer applies. If this is not possible under reasonable economic conditions or cannot be established within a reasonable period, the Buyer shall be entitled to withdraw from the contract. Under the stated preconditions

the Supplier shall also be entitled to withdraw from the contract. In addition, the Supplier shall render the Buyer exempt from undisputed or res judicata claims of the affected proprietary right holder.

14. The Supplier's obligations set out in Section VIII.13 are, subject to Section IX. in the event of property right or copyright violation, conclusive and only apply if the Buyer informs the Supplier without delay of the asserted claims regarding the violation of property right and copyrights, the Supplier adequately supports the Supplier in warding off the asserted claims or enables the Supplier to perform the modification measures stated in Section VIII.12, the Supplier remains able to adopt all warding off measures, including regulations that apply on an out-of-court basis, the defect in title is not based on an instruction issued by the Buyer and the infringement of a right is not caused by the fact that the Buyer has altered the delivery item, in particular by way of processing, or used it in a manner that is not as per agreement.

VIII. Reservation of title

1. Ownership of the delivered item is reserved up until payment in full of all claims resulting from the delivery contract. This also applies to all future deliveries, including if we do not expressly cite this at all times. The object of sale may be taken back if the Buyer acts in breach of contract (in particular in the case of default in payment).
2. As long as ownership has not yet passed to the Buyer, the Buyer undertakes to treat the object of sale with due care. The Buyer undertakes, in particular, insure the object of sale at its own cost against burglary, fire and water damage, and any other damage with adequate cover at replacement value. If the Buyer fails to furnish proof of insurance at the Supplier's request, the Supplier shall be entitled to insure the delivery item at the Buyer's cost. If maintenance and inspection work needs to be performed, the Buyer is to perform such work in good time at its own cost.
3. The Buyer is entitled to sell the reserved goods during the course of ordinary business activities. The Buyer assigns at this point in time to the Seller claims against the buyer from the sale of the reserved goods (including balance claims from current account agreements, from the sale, processing and finishing/blending of the supplied goods, in the sum of the agreed invoice final amount (including value added tax). This applies equally to the Buyer's claims regarding the reserved goods based on another legal reason (insurance or unlawful acts etc.). This assignment applies irrespective of whether or not the object of sale is sold without or after processing. The Buyer retains the authorisation to collect the claim following the assignment. This does not affect the Supplier's authority to collect the claim. However, the Supplier shall not collect a claim as long as the Buyer honours its payment obligations resulting from the collected proceeds, does not default in payment and in particular an application has not been filed for the institution of insolvency proceedings or payment is not discontinued. As soon as the Buyer fails to honour a contractual obligation, the Buyer shall, on request, disclose the assignment and furnish the necessary information and documents.
4. If a customer of the Buyer has effectively excluded the assignment of claims against it, the Buyer and Supplier shall, by way of internal dealings, render each other such as if the above-mentioned claims assigned in advance had been effectively assigned to the Supplier. The Supplier shall be authorised by the Buyer to assert the claims in the Buyer's name and on the Buyer's account as soon as the Buyer is no longer entitled, in accordance with the above regulation (sub-paragraph 3) to collect the claim in its own name.
5. The processing and finishing/conversion of the object of sale by the Buyer shall apply at all times on behalf of the Supplier without this resulting in liabilities. Insofar as the

object of sale is processed of mixed with items that are not our property, the Supplier shall acquire the co-ownership of the new item in the proportion of the objective value of the reserved object of sale to that of the other processed items at the time of processing/mixing. Insofar as the blending/mixing occurs such that the Buyer's item is to considered the primary item, it is deemed agreed upon that the Buyer shall assign to the Supplier proportionate co-ownership, and shall store the sole property or jointly owned property created in this manner on the Supplier's behalf. If acquisition of (joint) ownership is legally prevented, alternatively the Buyer shall assign its compensatory claim to the Supplier. To safeguard our claims against the Buyer, the Buyer also assigns to the Supplier the claims to which it is entitled against a third-party as a result of the blending of the reserved goods with a plot of land. The Supplier accepts this assignment.

6. To properly honour the Buyer's liabilities, the Supplier is entitled to request reasonable securities. The Supplier undertakes, at the Buyer's request, to release the securities to which it is entitled insofar as the value of such securities exceeds the claims to be secured by more than 20 %.
7. The supplied goods may neither be pledged nor assigned by way of security without approval. In the case of third party intervention regarding the reserved goods, the Buyer shall draw attention to this party's ownership, notify the Supplier without delay and provide any assistance necessary to safeguard the rights. Where the third party is not in a position to, or has undertaken to provide compensation for the court or out-of-court costs arising in that respect, the Buyer shall render the Supplier exempt from such costs.
8. In the case of acts in breach of contract by the Buyer – in particular in the case of default in payment – and in the case of lacking creditworthiness, separation of property may be requested without delay. The Supplier shall be entitled to take back the delivery item and the Buyer undertakes to surrender. The Buyer grants the Supplier, or its authorised representative, access to collect and take away.
9. The application for the institution of insolvency proceedings regarding the Buyer's assets shall entitle the Supplier to withdraw from the contract and request the immediate return of the delivery item.

IX. Liability

1. If the delivery item cannot be used as per agreement by the Buyer as per agreement as a result of culpability on the part of the Supplier caused by the failure to provide or faulty provision of proposals and advice prior to or after entering into the contract or as a result of violation of other incidental contractual obligations, the regulations of Sections VII and IX shall apply accordingly by way of exclusion of further claims on the part of the Buyer.
2. The Supplier shall be liable for damages – for whichever legal reasons – only in the case of intent and gross negligence.
3. In the case of minor negligence, the Supplier shall be liable – apart from the cases of the loss of life, physical injury or detrimental effects on health – only insofar as key contractual obligations are violated. Liability is limited to typical contractual and foreseeable damage.
4. In the event of minor negligence, liability for indirect and unforeseeable damage, production and utilisation failure, the loss of expected profits, the loss of expected savings and pecuniary damage regarding third party claims shall be excluded – apart from cases of the loss of life, physical injury or detrimental effects on health.

5. Further-reaching liability than that set out in this contract is excluded – without consideration given to the legal nature of the asserted claim. However, the above limitations on or exclusions from liability do not apply to no-fault liability that is specified by law on an obligatory basis (e.g. in accordance with the German Product Liability Act) or liability resulting from a no-fault guarantee.
6. Insofar as liability is excluded or restricted in accordance with sub-sections 3 and 4, this shall also apply to the personal liability of the Supplier's white collar workers, employees, representatives, executive bodies and vicarious agents.
7. Further claims are excluded.

X. Statute of limitations

All the Buyer's claims – irrespective on whichever legal grounds they are made – shall fall under the statute of limitations in 12 months. In the case of use of the object of sale in multi-shift operations, the limitation period shall be reduced accordingly regarding warranty claims. The statutory provisions apply to claims for damages.

XI. Special conditions for punched sheet plates

1. If sheet plates are processed on the basis of the Buyer's drawings, descriptions or samples etc., the Buyer shall assume the sole guarantee that no third party property rights or copyrights shall be infringed upon as a result of the processing in the above-mentioned manner.
2. We shall not be liable if a slight rust film forms on the parts as a result of degreasing them or if sheet metals from a strength of 80 kg tear as a result of the processing and furthermore if fine holes are created in the full bath galvanisation with a zinc film.
3. We shall not be liable if minor imperfections are identified on borders during punching.
4. If the Buyer makes available to us the material to be processed, this shall as a result be hired work and these provisions apply by way of analogy and in addition the following apply:
5. Liability for defects is excluded for damage that is caused as a result of material defects in the provided material that are not acknowledged.
6. The Buyer is to make the material available freight-free and free of charges.
7. If material faults lead to increased production costs, our price may be increased accordingly. Scraps and cutting created during hired work are taken account in the determined price. Therefore, these are not remunerated separately and shall become our property.
8. Waste in the case of hired work involving plastics shall be sent to the Buyer at the Buyer's cost.
9. In the case of justified complaints, we shall be liable at most in the sum of the justified wage. We shall only acknowledge claims that extend beyond this – in particular for the supplied material – if we had previously assured further reaching liability in writing.

XII. Place of performance, place of jurisdiction and applicable law

1. The Supplier's registered office is deemed the place of performance for all obligations resulting from the contractual relationship.

2. The court with jurisdiction for the Supplier's registered office shall be deemed the place of jurisdiction provided the Buyer is a merchant, legal person under public law or special public funds or does not have a general place of jurisdiction in the Federal Republic of Germany. However, the Supplier is also entitled to bring legal action at the court with jurisdiction for the Buyer's registered office.
3. Solely the authoritative law of the Federal Republic of Germany that applies to the legal relations of domestic parties amongst themselves applies to any legal relations between the Supplier and Buyer by way of exclusion of the UN Sales Law.
4. In the case of foreign business transactions, application of Sections 305 - 310 BGB is additionally excluded.

XIII. Final provisions

1. The potential invalidity of individual provisions shall not affect the validity of the other provisions. In the place of an invalid regulation a regulation is to apply that comes closest to intended economic purpose of the invalid provision in a legally permitted way.
2. Verbal subsidiary agreements have not been entered into. Amendments and supplementary information shall be subject to the written form. This also applies to the written form clause itself.
3. The Buyer's personal data shall be collected, processed and stored for the purpose of executing the contract.

Westfälische Metall-Locherei Franz Fahl GmbH
Lindenstraße 64-66
D-58256 Ennepetal