

Duro Metall GmbH
Albert-Einstein-Straße 1, 70806 Kornwestheim, Germany
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General Terms of Delivery

1. Contractual terms, applicable law

- a Our written confirmation of order and these general terms of delivery shall be exclusively authoritative for supply and service provided by us. Contradictory terms or those deviating from these terms of delivery only become binding for us if we expressly recognize them in writing. Acceptance of the delivered goods is seen as being recognition of our conditions.
- b The law of the Federal Republic of Germany shall apply to all legal relations with us; the application of the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 is excluded.

2. Prices, payment, security

- a Our offers are made without obligation. All taxes and other levies incurred for our deliveries and performance in the country of receipt shall be borne by the orderer unless this has been agreed otherwise.
- b Unless agreed otherwise, payment of the purchase price is to be made immediately after delivery. We only grant prompt-payment discounts by arrangement and not before settlement of our other due claims. Payment and prompt-payment-discount periods shall run from the invoice date, the date of the receipt of payment shall be authoritative for the compliance with the deadlines.
Costs and charges shall be borne by the orderer, we only accept bills if agreed in advance and in lieu of performance.
We can determine against which of our claims received payments are set off. Crediting bills and cheques is subject to them being paid in.
- c If periods for payment are exceeded, we are entitled to charge default interest in the amount of 8 % above the respective base interest rate which is published in the Federal Gazette.
- d Set-off and retention by the orderer are only permissible if the counter-claim has been recognised by declaratory judgment or is undisputed.
- e If the execution of the contract is jeopardised due to a lack of solvency on the part of the orderer, which shall also be applicable if the credit limit of a trade credit insurance is cancelled, we can refuse the performance which is incumbent on us and furthermore revoke all granted periods for payment and demand advance payment as security. In addition, we shall have the right to withdraw from the contract. If the orderer is in default in payment, we shall be entitled to take back the goods and accordingly to enter the orderer's plant. We can moreover prohibit the resale and further processing and the removal of the supplied goods.

3. Risk, delivery, trade terms, public standards

- a The orderer cannot reject part deliveries.
In the case of shipment, we shall determine the forwarder, carrier and route of shipment.

The goods will be delivered unpacked and unprotected against rust. If and insofar as this is customary in the trade, the goods will be delivered in packed condition. Any package, protection and/or transport device will be supplied according to our experience and at the Buyer's cost. They are accepted back in our warehouse. We will not take on the Buyer's costs for return transport or for own disposal of the packaging.
- b INCOTERMS 2000 shall apply to all trade terms.
- c The respectively valid edition of the standard shall apply to the public national or international standards stated in the order text.

4. Time of delivery, impediment to delivery, default

- a Delivery periods and dates always only indicate the approximate time of delivery ex works or warehouse.
- b Our obligation to effect delivery shall be subject to correct delivery to ourselves in due time, unless the unpunctual or belated delivery or non-delivery is our fault.
- c If the delivery is delayed due to force majeure, then a reasonable extension to the delivery period in accordance with the circumstances shall be granted. This provision shall be applicable irrespective of whether the reason for the delay occurs before the agreed delivery period or at a time when the affected contracting party is in default. Operational breakdowns, loss of production, procurement difficulties, industrial disputes and other circumstances which make the delivery significantly more difficult for us shall be equivalent to force majeure.

- d We shall only be in default in all cases if after the due date we do not effect performance within a reasonable additional period following a written reminder from the orderer on account of reasons for which we are responsible. A prerequisite is furthermore that the orderer itself is not in default with an obligation arising from the business relationship.
- e If our default is due to slight negligence, then our liability for damages is excluded, unless it is a case of death, physical injury or damage to health. Alternatively, we limit our liability arising from default in the case of slight negligence to the typically foreseeable loss.

5. Weight, unit number, dimensions, condition, alloys, deviations

- a A deviation in weight, unit number or specifications of the supplied goods from our details in the delivery note and invoice must be proved by the orderer.
- b Depending on the type of the products, we are entitled to make excess or short deliveries of up to 10 % with regard to the agreed weights or the unit number. The tolerances of the respectively valid German Industrial Standard edition shall apply to the prescribed values, otherwise the customary permissible deviations. References to standards, material data sheets, works test certificates, etc. are no guarantee for the nature of the goods.

The weighing performed by us is decisive for the weights.

6. Reservation of title

- a The goods shall remain our property until the final performance of all current and future claims arising from the business relationship with the orderer.
- b In the case of the processing of our goods by the orderer, we shall be regarded to be the manufacturer, without us thus incurring obligations, and shall acquire ownership of the newly created articles. If the processing is undertaken together with other materials, we shall acquire co-ownership in proportion to the invoice value of our goods to the invoice value of the other materials.
If in the case of the joining or mixing of our goods with an article of the purchaser, this article is to be regarded as the principal article, co-ownership of the article shall pass to us in proportion to the invoice value of our goods to the invoice value or – if no such value applies – market value of the principal article.
In these cases, the orderer shall be regarded to be the custodian.
- c The orderer already now assigns to us by way of security all claims arising from the sale of goods to which we are entitled to ownership rights in the amount of our ownership share of the sold goods.
- d The orderer is entitled to dispose of the goods subject to our ownership rights in the ordinary course of business and to collect the assigned claims as long as it meets its obligations in due time from the business relationship with us – especially complies with the terms of payment – and a danger to our reservation of title rights seems impossible.

Otherwise we are entitled, also without withdrawing from the contract and without setting an additional period for performance, to demand at the orderer's expense the interim surrender of the goods subject to our ownership. At our request, the orderer must grant us access to take an inventory and to take possession of our goods. We are furthermore entitled to revoke the right to collect claims.
- e At our request, the orderer must give us all necessary information on the stock of the goods subject to our ownership and on the claims assigned to us above and must also notify its purchasers of the assignment.
- f If the value of the securities exceeds our claims by more than 20 %, then we shall accordingly release securities of our choice at the orderer's request.

7. Warranty

- a The goods are to be examined without delay according to § 377 HGB (Commercial Code). Material defects, wrong deliveries and wrong quantities are, if they can be ascertained by reasonable examinations, to be notified without delay in writing, at the latest, however, 2 weeks after receipt of the goods. If a defect later becomes apparent which was not recognisable upon the initial examination, then it must be notified – with the immediate cessation of any treatment or processing – without delay in writing, at the latest, however, 2 weeks after discovery.
- b If the orderer fails to make notification in due time, then the goods shall be considered to be accepted with regard to the defect. The same shall be applicable if the orderer does not enable us to undertake a proper examination of the defect without delay after our request.
If the orderer treats or processes the goods, then we may presume that the goods are suitable for the orderer's purpose.
- c In the case of not just insignificant material and legal defects, we are entitled to take the following action in addition to the statutory provisions:
We are entitled to repair the defect twice. If it arises from the manner of the article or the defect or on account of the other circumstances that the repair has not yet failed after 2 attempts and if it is reasonable for the contracting party, then we are entitled to undertake further repairs. If the repair has failed, then the contracting party is entitled to reduce the remuneration or at its option to withdraw from the contract.
- d The orderer cannot derive any rights from faulty part deliveries regarding the other part deliveries.

For goods that have been sold as declassified material - e.g. so-called Ila-material -, the Buyer has no rights arising from defects, with regard to the specified declassification reasons and such defects, which normally occur. Goods sold as Ila material do not entitle the Buyer to claims arising from defects.

8. Technical advice, guarantee

- a We give technical advice to the best of our knowledge and ability. It is, however, non-binding and does not release the orderer from undertaking its own examinations and tests. The orderer is responsible for complying with the statutory and official regulations when using our goods.
- b Details on the scope of delivery, dimensions, weights, materials, appearance and performance serve to denote the subject-matter of the delivery and do not constitute a service-life guarantee or a guarantee of specific characteristics. An assumption of a guarantee must be expressly made in writing to be legally effective. If the goods are lacking such a guaranteed characteristic at the time of the passing of risk, then the orderer's rights are exclusively in accordance with the applicable law.

9. General limitation of liability

- a If our obligation to pay damages is based on the only slightly negligent infringement of fundamental contractual obligations, we shall limit our liability for damages and the liability of our legal representatives or vicarious agents to the typical contractual foreseeable loss, unless it is a case of death, physical injury or damage to health.
- b If our obligation to pay damages is based on the only slightly negligent infringement of non-fundamental secondary obligations, we shall exclude our liability and the liability of our legal representatives or vicarious agents, unless it is a case of death, physical injury or damage to health.
- c In all other cases of liability for damages due to the negligent infringement of obligations, irrespective of the legal basis, our liability for damages shall be limited to the typical contractual loss which is foreseeable for us.
- d Alternatively, we exclude our liability for damages and the liability of our legal representatives or vicarious agents if we commit a slightly negligent infringement of a contractual obligation which according to its type and consequence does not jeopardise the purpose of the contract, unless it is a case of death, physical injury or damage to health.
- e The above provisions shall not apply to claims according to the German Product Liability Act.
- f If a claim is made on us for damages arising from product liability according to Article 823 of the German Civil Code, we shall limit our liability over and above the above provisions to the compensation of our liability insurer. The insured sum is covered by a policy which typically reflects the possible losses, the contract and the articles. If the insurance does not apply or does not apply in full, then our liability, limited to the amount of the insured sum, shall remain unaffected. If the insured sum is not covered by a policy which typically reflects the possible losses, the contract and the articles, we shall limit our liability in these cases to the claim sum typical of the losses, the contract and/or the articles.
- g The orderer is obliged to take action without delay after discovering a defect so that further losses can definitely be avoided. The orderer must estimate the claim sum expected by it with the notification of the defect. The orderer shall notify us accordingly without delay in writing after the occurrence of circumstances which may influence the amount of the claim. If the orderer fails to make this notification, then we shall not be obliged to reimburse financial losses over and above this sum.

10. Limitation of actions

All warranty claims and claims for damages – irrespective of the cause in law – shall become statute-barred after 12 months from the time of delivery or performance, if a longer warranty period is agreed, at the time of its expiry, providing the law does not stipulate mandatory longer periods in accordance with §§ 438 section 1 No. 2, 479 section 1 and 634a section 1 German Civil Code.

11. Third-party industrial property rights, rights to tools

- a If third-party industrial property rights are infringed in the case of deliveries according to drawings or other details of the orderer, the orderer shall indemnify us against all claims.
- b The orderer shall not acquire any rights to the tools themselves by payment in full or in part of tool costs.

12. Place of performance, place of jurisdiction

- a Place of performance for the delivery is our place of business. Place of performance for the payment is our place of business.
- b If the orderer is a fully qualified merchant, then the place of jurisdiction is Ulm (Danube).