

# Diehl Metal Applications

ZIMK Zehdenick Innovative Metall- und Kunststofftechnik GmbH

## General Terms and Conditions of Delivery and Payment

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### 1. Exclusive validity of these Terms and Conditions

- 1.1. These Terms and Conditions of Delivery and Payment shall apply exclusively to these and also all future supply relationships. Purchasing conditions of the Ordering Party shall herewith be rejected to the extent that their content is in conflict with these conditions.

### 2. Conclusion of the contract / content of the contract

- 2.1. Offers shall be non-binding insofar as the Supplier has not expressly submitted a declaration of consent.

A contract shall only come into effect upon receipt of the written order confirmation of the Supplier, which shall be decisive exclusively for the content thereof.

- 2.2. Amendments or supplements to the contract shall require the written form.
- 2.3. The documentation included in the quotations shall merely serve as information for the Ordering Party and shall not constitute any warranty.
- 2.4. The rights of the Ordering Party arising from the contract shall not be transferable.

### 3. Metal contracts

- 3.1. If the Ordering Party places an order for the products offered by the Supplier, this order shall only be binding 1) if the Supplier accepts this order and 2) if in addition to the order for the actual products, a mutual regulation on the treatment of the metal contained in the ordered products is made, in which at least the following questions are handled:- the pricing criteria (for setting a price) for the metal processed by the Supplier in the products, the total processed quantity and the acceptance (call-off) dates ("Metallkontrakt" /Metal Contract). With respect to the prices for the products ordered by the Ordering Party, this shall also mean that these shall only be able to be agreed to as fixed, if all the points to be regulated in the Metal Contract concluded parallel thereto are also definitely fixed. Should an order be submitted without a metal contract of this kind having been concluded parallel thereto handling all the above-mentioned points, no binding contract for the delivery of the ordered products shall come into effect, even if the Supplier has explicitly confirmed the order.

- 3.2. If the Ordering Party fails to accept the ordered products on the dates set for call-off, or, where no such date is prescribed, on the last permissible date in accordance with the underlying metal contract, the Supplier shall be entitled, for each commencing 30-day period of the delay, to a sum amounting to 1% of the value of products not accepted or accepted too late. The calculation of this amount shall be based on the metal price that was valid or would have been valid at the time of acceptance of the products on the respective call-off date. The Supplier shall also be entitled to this amount, even if it withdraws from the Contract for Delivery, wholly or partially, due to this delay.

- 3.3. If during the term of a metal contract insolvency proceedings (or comparable proceedings abroad) are opened against the assets of the Ordering Party, and if the insolvency administrator decides against the continuation of the contract (e.g. in accordance with § 103 InsO [German Statute on Insolvency]), all the claims of the Supplier for payment of the metal that has not yet been delivered and/or not yet assigned, shall be due upon the date when such proceedings were opened.

### 4. Delivery

- 4.1. All deliveries shall be ex works (INCOTERMS 2010).
- 4.2. Part deliveries shall be permissible, except where otherwise expressly agreed upon. With respect to the delivery of newly produced items the Supplier reserves the right for manufacturing reasons to deliver a quantity of up to 5% exceeding or falling short of the agreed ordering quantity, whereby a delivery within this range shall represent the agreed quantity for delivery. The amount to be paid shall be for the quantity of the products actually delivered in each case.
- 4.3. The delivery dates quoted in the order confirmation shall relate to the date on which the delivery leaves the factory of the Supplier. The adherence to the delivery schedule shall require the fulfilment of the contractual obligations of the Ordering Party.

A reasonable extension of the delivery schedules shall be deemed as given, if the delivery is delayed due to unforeseen or unavoidable events, in particular a shortage of energy or raw materials, strikes, lockout or official

measures, or due to the delay or absence of subcontracted supplies. If these hindrances last longer than one month or if there is a closing-down of operations in the production enterprise of the Supplier or its subcontractors, or if not only temporary, out-of-the ordinary incidents occur that cannot be controlled by the Supplier, the Supplier shall be entitled to withdraw from the contract.

- 4.4. If the Supplier causes a delay in the delivery, the Ordering Party shall be entitled to grant the Supplier a reasonable extension of the delivery deadline. If the delivery fails within this deadline or is incomplete/incorrect, the Ordering Party shall only be entitled to withdraw from the contract. The Ordering Party shall have the same right if the performance is impossible for reasons the Supplier is responsible for. In the latter case, an extension of the deadline shall not be required, however. Other claims due to delay or impossibility of the delivery, particularly those for compensation shall be excluded.

- 4.5. If the Ordering Party fails to accept items provided in good time as defined in the contract, the Supplier may store these at the expense of the Ordering Party until their acceptance, or until the withdrawal of the Supplier becomes effective, up to a maximum of three months for a lump sum of 0.5% of their value per commencing 30-day period at the cost and risk of the Ordering Party. The charge shall be in accordance with the above section 3.2; the amount for the storage may, if necessary, be charged in addition to the intended lump sum claimed there for the delay.

- 4.6. In the event of default of acceptance the risk shall pass to the Ordering Party.

### 5. Incoming goods inspection, notice of defects, liability for defects and other liability

- 5.1. The Contractor shall inspect the items delivered by the Supplier in any case immediately upon receipt to the extent stipulated under § 377 HGB [German Commercial Code]. Any discovered defects shall be notified in writing within 10 working days. In the case of hidden defects, the written notification shall be made immediately upon the identifiability of the defect.

- 5.2. For any defects which are notified duly and in good time, the Ordering Party shall be entitled, at the Supplier's discretion, to repair or replacement ("supplementary performance"). Should such supplementary performance fail twice, the Ordering Party may at its own discretion, either reduce the purchase price to an appropriate extent or withdraw from the contract.

In addition he may demand compensation for the following damage:-

Expenses required for the purpose of supplementary performance, in particular, travel, transport, labour and material costs. Higher expenses due to a subsequent transfer of the item of delivery to a place other than the branch of the Ordering Party shall not be permitted unless the transfer conforms with the intended use.

For damage caused by willful intent or gross negligence on the part of the Supplier or its vicarious agents, and for personal injury, the Supplier shall be liable without limitation in accordance with the legal provisions.

Above and beyond the foregoing, any claims of the Ordering Party for compensation of any direct or indirect damage – irrespective of the cause in law – including any possible claims for damages due to a breach of pre-contractual obligations and damages in tort shall be excluded.

- 5.3. For companies the liability period for supplementary performance claims shall be 12 months, and for compensation claims 24 months. For consumers, the liability period for all claims shall be 24 months. It shall commence upon delivery or acceptance of the respective products.

- 5.4. For the replacement delivery or for the repaired goods, the liability period shall basically endure until the expiry of the original liability period, but shall be at least 3 months.

### 6. Credit unworthiness of the Ordering Party

- 6.1. A condition for the obligation of the Supplier to deliver shall be the absolute creditworthiness of the Ordering Party. Should the Supplier receive information after concluding the contract, that gives reason for justifiable doubt, the Supplier shall be entitled to demand, at its own discretion, either payment in advance or demand the provision of a security or, insofar as a form of payment other than payment in cash has been agreed upon, demand payment in cash, or withdraw from the contract, or refuse perfor-

mance and demand compensation for damage instead of performance. Such doubts shall be justified, in particular, but not exclusively, in the following cases:- in the event of a considerable deterioration in the Ordering Party's overall financial position, cessation of payments, bankruptcy or composition proceedings, business dissolution, or if the Ordering Party mortgages or orders inventories, accounts receivable or purchased goods as security for other creditors.

## 7. Retention of title

- 7.1. The Supplier reserves title to the delivered goods until fulfilment of all claims to which it is entitled, now or in future, against the Ordering Party on any legal ground whatsoever, whereby payments by cheque or bills of exchange shall not be acknowledged as fulfilled until they have been paid in.
- 7.2. The Ordering Party shall perform any treatment or processing for the Supplier, without any obligations arising therefrom for the latter. Should the treatment or processing give rise to a new movable item that exceeds the value of the security, the Supplier herewith already assigns to the Ordering Party the joint ownership thereof in the same proportion to which the value of the processed new item exceeds the value of the security. If the delivered goods are blended or combined with other items, the Ordering Party shall, at the time of concluding the Contract for Delivery, assign its right to hand-over, right of ownership, or right of co-ownership of the blended stock or of the new item to the Supplier accepting this assignment, to the value of the security of the Supplier, and shall store the blended stock or the new item for the Supplier with the due care of a prudent businessman.
- 7.3. The Ordering Party shall only be permitted to sell the goods subject to retention of title in the orderly course of business. The Ordering Party shall assign in advance all claims to which it is entitled as a result of the resale or any other cause in law, to the Supplier for its security. The Ordering Party shall be authorised to collect the claims assigned. If the claims of the Supplier become due, the Ordering Party shall keep the amounts collected separately and pay them to the Supplier immediately. The Ordering Party shall inform the Supplier immediately of any access of third parties to the goods subject to retention of title or to the assigned claims. Any costs arising from interventions shall be borne by the Ordering Party.
- 7.4. If the value of the given securities exceeds the Supplier's claims by a total of more than 20%, the Supplier shall thereby, at the request of the Ordering Party, be obligated in this respect to transfer these back.
- 7.5. In the case of non-compliance with the conditions and terms of payment, protested bills and cheques, an application for opening insolvency proceedings, stoppage of payment, dissolution of business and initiation of negotiations on the conclusion of a moratorium, the rights of the Ordering Party to process and sell the goods subject to retention of title and to collect the above claims assigned by the Supplier shall expire. The Supplier shall in this case, be entitled to take control of the goods. Should the Supplier make use of this right, this shall only represent a withdrawal from the contract in the event of an express declaration. Warehouse, transport and other costs incurred as a result of the return shall be borne by the Ordering Party. The Ordering Party shall additionally be obligated in this case, at the Supplier's request, to notify the third-party debtors of the assignment of proprietary rights and claims stipulated in the foregoing, and to hand over to the Supplier the information necessary for claiming its rights against the third-party debtors, and the required documentation. The Supplier shall be entitled to credit the goods taken back due to the retention of title at the price valid on the day of the return or the price reasonably obtainable by the exploitation or sale thereof, in lieu of the invoice value, whereby the cost to sell shall be borne by the Ordering Party in each case.

## 8. Prices, and terms and conditions of payment

- 8.1. All prices shall be payable net plus value-added tax, transport and packaging. Unless otherwise agreed, the payment invoiced by the Supplier shall be due without deductions and discounts within 14 days of the date of the invoice; invoices which also include charges for precious metal shall be due upon receipt of the invoice. In the case of orders for the galvanic treatment of parts/material provided, they shall require a condition appropriate for the galvanisation thereof. Should this condition fail to be fulfilled, the Supplier may, without prior consultation with the Ordering Party, take the necessary measures for producing such a condition and additionally charge the Ordering Party the costs thereby incurred. The Ordering Party shall not have the right to retain payments; set-off shall only be permissible with legally established or uncontested claims. The Supplier shall have the right, independent of the maturity of the claims, to offset claims of the Ordering Party accruing to the latter against companies with which the Supplier is directly or indirectly affiliated.

- 8.2. In the case of a deterioration of the financial circumstances of the Ordering Party, the Supplier shall have the right to declare the claims against the Ordering Party to which it is entitled immediately and to demand payment.
- 8.3. The Ordering Party shall not have the right to retain payments; set-off shall only be permissible with legally established or uncontested claims. The Supplier shall have the right, independent of the maturity of the claims, to offset claims of the Ordering Party accruing to the latter against companies with which the Supplier is directly or indirectly affiliated.

## 9. Final clauses

- 9.1. The place of fulfilment for all obligations arising from the contract shall be the principle place of business of the Supplier.
- 9.2. For this contractual relationship and all disputes arising therefrom or in connection therewith, German Law shall be applicable with exclusion of the uniform United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 9.3. The place of jurisdiction for all disputes arising from the contractual relationship shall be the principle place of business of the Supplier. The Supplier shall also have the right to institute legal proceedings at the court generally competent for the principle place of business of the Ordering Party.
- 9.4. The legal invalidity of individual provisions of the contract shall not affect the validity of the remaining provisions of the contract.

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