

# PROMStahl GmbH Terms and Conditions of Sale, Delivery and Payment

## A. Applicability of the Terms and Conditions

- These terms and conditions of sale, delivery and payment shall apply exclusively to entrepreneurs conducting business activity or independent professional, and legal persons under public law. Quotations, deliveries and services of PROMStahl GmbH (hereinafter referred to as the Supplier) shall be subject to these terms and conditions. Accordingly, they shall also apply to all future business relations, even if they are not expressly agreed again. Confirmations of the purchaser which refer to their trade and conditions, e.g. VOB (*standardised German order and construction work terms and conditions*) and their rules on liquidated damages, are hereby excluded.
- Different terms and conditions shall apply only if they are confirmed in text form by the supplier.

## B. Quotation, conclusion of a contract and delivery time

- Quotations of the supplier shall be non-binding. Statements of acceptance and all orders require an order confirmation by the supplier in text form to be effective. The same shall apply to additions, changes and additional agreements.
- Sales advisors and sales representatives shall not be entitled to make or change binding agreements on contractual dates on behalf of the supplier, in particular delivery dates and liquidated damages, or to make other assurances (waiver of power of attorney).
- Only the supplier's confirmation of the order in text form shall be authoritative for the scope and delivery time and for service/performance. Oral agreements and amendments shall require confirmation by the supplier in text form. The supplier shall carry out its services based on the agreed properties and recognised technical rules; no special guarantees shall be granted. The supplier reserves the right to make changes in design and other technical modernisations, and adjust the system/equipment subject to the contract until it is completed, without the prior consent of the purchaser, provided the quality, performance and other technical parameters are not deteriorated thereby. Partial deliveries shall be acceptable, if they not put a heavy burden on the purchaser.
- The supplier shall only comply with official regulations and requirements if it is informed about them in a timely manner and they are expressly included in its order confirmation.
- Products or parts cannot be returned. If the return of catalogue goods has been contractually agreed, this shall only be possible for goods which can be reused. Unless otherwise agreed, the supplier shall refund 60% of the value of the goods in this case. Damaged used parts shall be disposed of against payment on request.
- The supplier shall meet any agreed delivery date, if all commercial and technical issues between the parties to the contract are clarified and the purchaser fulfills all its obligations, e.g. advance payment. Otherwise, the delivery date shall be extended accordingly. In the event of late payment of the advance and/or instalment, the supplier shall have the right, after sending a reminder, to withhold its delivery or not to deliver. The next condition for meeting the delivery date shall be correct and timely procurement from sub-suppliers. In case of possible delays, the supplier shall inform about them as soon as possible. Any further changes the purchaser may request shall extend the delivery date. Following agreement on the requested change, the delivery time shall start anew. If failure to meet the delivery date shall be due to a fault majeure event, disputes between employees and employers which are beyond the supplier's reasonable control, then the delivery date shall be extended accordingly. This shall also apply to cases where such circumstances affect a sub-supplier. The supplier shall notify the purchaser of the occurrence and cessation of such circumstances as soon as possible. The delivery date shall be deemed to have been met, if the delivery item has left the supplier's works by the time it expires.
- If dispatch of the goods is delayed for reasons attributable to the purchaser, it shall be charged – from the 14<sup>th</sup> day of notification of readiness for dispatch – with costs of storage, in the case of storage at the supplier's works, amounting to 0.5% of the invoice for each month. The supplier shall have the right, after setting an appropriate date and following its ineffective expiry, to dispose of the delivery item otherwise and to deliver the goods to the purchaser within the appropriate, extended period.

## C. Price and payment terms and conditions

- Unless otherwise agreed, the prices shall be those quoted at the supplier's works, including loading at the works but excluding packaging, transport, unloading, and assembly. VAT at the statutory rate applicable from time to time shall be added to the prices.
- Unless otherwise agreed, payments by bank transfer must be made to the supplier's account without any deductions as follows:  
40% as advance payment after receiving order confirmation/before delivery against submission by the supplier of an advance payment guarantee issued by a credit institution or insurer based in the European Union, the remaining 60% immediately after the delivery, in cash without deductions. No interest shall be charged on the advance payment.
- Partial deliveries and performance shall be acceptable, unless unreasonable for the purchaser, taking into account the supplier's interest. In the case of permissible partial deliveries and partial implementation of the contract, the payment term for the amount applying to partial deliveries or partial implementation of the contract shall be determined in accordance with C.2.
- Retention of payment on the account of any counterclaims of the purchase not admitted by the supplier or not established by a final judgment as well as any setoff against such counterclaims shall be excluded, unless the right of retention or the counterclaims arise from the same contractual relationship as the supplier's claim.

## D. Termination of the contract by the purchases, lump sum damages

If the purchaser is entitled to terminate the contract and does so, or if the supplier withdraws from the contract for reasonable reasons due to a culpable breach of the contract, then the supplier shall be entitled to demand liquidated damages equalling 20% of the net order value. The supplier reserves the right to claim higher damages. The purchaser reserves the right to prove lesser damage.

## E. Transfer of risk

- The risk of accidental loss and accidental deterioration shall transfer to the purchaser as soon as the products have been handed over to the person responsible for transport or have left the supplier's warehouse for shipment. In the case of acceptance by the purchaser, the risk shall transfer to the purchaser upon notification of readiness for acceptance. This shall also apply to partial deliveries and situations in which the supplier has committed to perform other services, e.g. assembly.
- The risk of accidental loss or accidental deterioration of the condition of the products shall transfer to the purchaser when the purchaser is in default with acceptance at the latest.

## F. Retention of title

Delivered products shall remain the property of the supplier until the agreed price has been paid in full and all claims to which the supplier is entitled against the purchaser under the business relationship have been settled. The purchaser shall be obliged to handle products subject to the retention of title with care for the duration of such retention of title. In particular, it shall be obliged to insure the products at its own expense against damage by fire, water and theft at replacement value. At the request of the supplier, the purchaser shall produce proof of insurance. The purchaser shall hereby assign all claims for compensation under such insurance to the supplier. The supplier hereby accepts such assignment. If an assignment is not acceptable, the purchaser shall instruct the insurer to make all payments exclusive to the supplier. Further claims of the supplier shall remain unaffected.

- The purchaser shall not be authorised to pledge the products subject to the retention of title, transfer them by way of security, or make any other dispositions which endanger the supplier's title. In the case of seizure or other interventions of third parties, the purchaser shall immediately inform the supplier in writing and provide all necessary information, notify the third party of the supplier's title, and cooperate with regard to the supplier's actions to protect the products subject to the retention of title. If the third party is unable to reimburse the supplier for any judicial or extrajudicial cost incurred in enforcing the supplier's title, the purchaser shall be obliged to compensate the supplier for the resulting damage, unless the purchaser is not responsible for the breach of the obligation.
- In the event of infringing behaviour, in particular delay in payment by the purchaser, the supplier shall have the right, without prejudice to its other rights, to withdraw from the contract following a grace period set by the supplier. The purchaser shall immediately provide the supplier or its representatives with access to the products subject to the retention of title and release them. After due notice in due time, the supplier may otherwise dispose of the products subject to the retention of title in order to satisfy its due claims against the principal.
- Purchaser's combination of the products subject to the retention of title with other items not belonging to the supplier shall always be done for the supplier. If the products are combined with other items not belonging to the supplier, the supplier shall acquire joint ownership of the new property in the ratio of the value of the delivered products to other items at the time of combination. The purchaser shall store new items in a safe place for the supplier. In all other aspects, the same provisions shall apply to the item obtained from the combination as to the products subject to the retention of title.
- At the request of the purchaser, the supplier shall release the securities to which it is entitled to the extent the realisable value of the security, considering usual deduction of the bank's assessment, exceed 15% of the supplier's claims under the business relationship with the purchaser. The basis for the valuation shall be the invoice value of the products subject to the retention of title, and for receivables – the nominal value. The choice of items to be released shall be at the supplier's discretion.
- The purchaser shall be entitled to resell the purchased item in the ordinary course of business; however, it shall assign to the supplier all claims equalling the final invoice amount (including VAT) on the account of purchaser's claims against its customers or third parties for resale, irrespective of whether the purchased item has been resold without or after processing. The purchaser shall remain authorised to collect this receivable even after the assignment. It shall not affect the supplier's right to collect receivables on its own. However, the purchaser undertakes not to collect receivables as long as it meets its payment obligations from the earned profits, is not in default with payment, and in particular no application for insolvency proceeding has been filed and no payments have been withheld. In such a case, the supplier may require the purchaser to disclose the assigned claims and the debtors, provide all information required for collection, submit related documents, and inform the debtors (third parties) about the assignment.

## G. Assembly

The Supplier's Special Terms and Conditions of Assembly shall additionally apply to assembly.

## H. Claims for defects

With regard to delivery defects, the supplier shall provide a guarantee excluding any further claims – except for the claims set out Section J above – under on the following terms and conditions:

- The obligation to examine the goods and notify of defects pursuant to article 377 of the German Commercial Code (HGB) shall also apply to the purchaser who is not a merchant within the meaning of law. Hidden defects must be reported to the supplier in text form as soon as they have been discovered. The purchaser should describe the defects in text form, informing the supplier about them. Furthermore, a prerequisite for claims on the account of defects caused by the purchaser shall be that during planning, construction, assembly, connection, installation, commissioning, operation and maintenance of the products, the specifications, remarks, guidelines and conditions included in technical notes, assembly and operating manuals, and other documents regarding individual products shall be met, in particular that maintenance is properly carried out and documented, and recommended parts are used.
- All parts, which are found to be defective due to circumstances prior to the transfer of risk, shall be repaired or replaced with defect-free parts free of charge at the supplier's discretion. The other party shall be notified of the discovery of such defects in writing. Replaced parts shall become the property of the supplier. The purchaser, after consulting the supplier, shall provide the supplier with time and allow it to order all repair works and replacement deliveries it deems necessary; otherwise, the supplier shall be relieved from liability for the consequences arising therefrom. With regard to direct costs which arise in connection with repair works or replacement delivery, the supplier shall incur – if the complaint proves justified – the cost of the replacement delivery including shipment. Furthermore, it shall bear the cost of disassembly and assembly, as well as the cost of any necessary deployment of fitters and assistants, including travel expenses, provided this does not impose a disproportionate burden on the supplier.
- According to the applicable regulations, the purchaser shall have the right to withdraw from the contract – considering statutory exemptions – upon the ineffective expiry of the term given to the supplier for repair or replacement delivery related to the defect. If there is only a minor defect, the purchaser shall have the right only to reduce the contractual price. Beyond this, the right to reduce the contractual price shall remain excluded.
- If the purchaser or a third party make corrections in an unprofessional manner, the supplier shall not be held liable for the consequences arising therefrom. The same shall apply to a change in the delivery item made without prior consent of the supplier.
- Descriptions and data regarding the prices, weights, dimensions, performance, power consumption etc. included in the provided documentation or catalogues, prospectuses, letters, announcements, drawings, pricelists etc. shall be binding, taking into account the tolerances from DIN EN standards.
- No guarantee shall be granted with regard to lightfastness of plastic and painted coatings, or deliverables which, due to their material properties or method of application, are subject to increased wear and tear (e.g. gaskets, permanently elastic welds, plastic bearings).
- Claims of the purchaser for reimbursement of expenses instead of damages in lieu of performance shall be excluded, unless the expenses would also be claimed on reasonable grounds by a third party. Roszczenia zamawiającego o zwrot wydatków zamiast odszkodowania w miejsce wykonania są wykluczone, chyba że wydatki byłyby również dochodzone na uzasadnionej podstawie przez stronę trzecią. Claims of the purchaser according to article 439 section 2 sentence 1 of the German Civil Code (BGB) shall be excluded, unless the supplier is held liable for the defect. Articles 327f, 327u, 445a, 445b, 445c, 478 and 479 of the BGB shall remain unaffected.

## I. Liability

- If the delivery item cannot be used by the purchaser in accordance with the contract through the supplier's fault as a result of omissions or faulty execution of proposals and advice before or after concluding the contract, or due to infringement of other contractual obligations – in particular the operating and assembly manual of the delivery item – then the regulations under Section J and J.2. shall apply, excluding any further claims of the purchaser.
- In the case of damage which has not occurred in the delivery item itself, the supplier shall only be held liable – regardless of legal basis – (1) for wilful actions, (2) in the event of gross negligence of company bodies or managers, (3) in the event of culpable exposure to danger of loss of life or health, (4) in the event of defects deliberately concealed by the supplier, or if the supplier guaranteed freedom from defects, (5) in the event of defects of the delivery item, if liability for personal injury or property damage to items in private use is held in accordance with the principles of product liability. In the event of culpable violation of essential contractual obligations, the supplier shall be held liable also for gross negligence of persons other than managers and for slight negligence.

## J. Limitation of claims

The period of limitation for claims of the purchaser on the account of defects shall be one year. If defective products have been used in accordance with their intended purpose in a building and caused the defect, or if the defect concerns a building, the limitation period shall be five years. According to sentence 1 above, the period of limitation shall also apply to tort claims based on a defect in the products. The limitation period shall begin to run upon delivery of the products. Shortening of the limitation period shall not apply to the liability of the supplier for claims arising from a breach of the guarantee or damage for culpable exposure to danger of loss of life or health, or injury, for wilful and gross negligence and for product defects, or to the extent the supplier has assumed the risk of the order. The supplier's position regarding a complaint for a defect reported by the purchaser shall not be deemed to be a start of negotiations concerning the complaint or circumstances constituting the basis for the complaint, if the complaint for defects is rejected by the supplier in its entirety.

## K. Force majeure

- If force majeure prevents the supplier from fulfilling its contractual obligations, in particular delivery of the products, the supplier shall be relieved from its obligation to implement the contract for the duration of the obstacle and a reasonable start-up period, without being obliged to pay damages to the purchaser. The same shall apply to a situation where fulfilment of the obligations by the supplier is disproportionate hindrance or temporary prevention due to unforeseeable circumstances for which the supplier is not held liable, in particular due to industrial disputes, official measures, shortages of power, obstacles in supplier's delivery, or serious operational disruptions. This shall also apply to a situation where such circumstances arise with a sub-supplier. If the supplier is relieved from the delivery obligation, it shall return all advance payments made by the purchaser.
- The supplier shall have the right to withdraw from the contract after a reasonable period, if such an obstacle continues for longer than four months and the supplier is not interested in the implementation of the contract due to the obstacle. At the request of the purchaser, the supplier shall declare upon the expiry of the said period if it exercises its right to withdraw from the contract or deliver the products within an appropriate period.

## K. Competent court

If the supplier is a merchant or legal person under public law, or constitutes a separate public-law asset, the exclusive court for disputes arising out of the contractual relationship shall be the competent court having jurisdiction over the supplier's registered office.

## M. Governing law

To the contractual relationship between the supplier and the purchaser, the law of the Federal Republic of Germany shall apply exclusively, without the United Nations Convention on Contracts for the International Sale of Goods (CISG).