



# Stahl- und Walzwerk Marienhütte GmbH

## General Terms and Conditions of Sales and Delivery

### 1. Scope of Application and Acceptance of Orders

- a. For all of our deliveries and services, the below terms and conditions shall apply. Any existing contradictory general terms of trade of the other party to the contract shall be considered as being null and void, unless such deviations from the present general terms of sale and delivery have been agreed upon explicitly. As a general principle, any divergent agreements shall be made in writing, in order to become effective.
- b. In order to be binding, all purchase orders require our confirmation in writing. Likewise, any supplementary modifications to, or cancellations of, purchase orders already confirmed by us, are subject to our approval in writing. Fax or e-mail messages meet the requirements of communication in writing.
- c. All our confirmations are subject to sufficient collateral for default risk.

### 2. Shipment and Passage of Risk

- a. Unless otherwise agreed in writing, our shipments shall be CPT according to the INCOTERMS in force on the day of signing the contract.
- b. The measures and weights established in our works are decisive for calculating the invoice amount.

### 3. Default of Delivery / Default of Acceptance

- a. Should a delay in delivery occur due to circumstances for which Marienhütte cannot be held responsible, delivery time shall be extended by the duration of these delaying circumstances.
- b. In case of a potential delay in delivery for which we are to be held responsible, the Buyer may either insist on delivery or rescind the contract after having granted a reasonable grace period stipulated by mutual agreement.
- c. Should the Buyer not take delivery of the goods provided in accordance with the contract in the place as provided for by the contract or at the date agreed upon by contract, we would be entitled to insist on the compliance with the terms of the contract, or to rescind the contract after granting a grace period of 14 days and to resell the goods to a third party. This does not exclude any further claims for damages.

### 4. Prices

The prices are made up by a basic price and a dimensional surcharge. Prices shall only be binding for us when agreed in writing and/or when confirmed in writing.

### 5. Payment

- a. All payments shall be made in accordance with the terms of payment to be agreed in writing. Unless terms of payment were agreed, payment shall fall due 30 days from date of invoice.
- b. The Buyer shall not be entitled to withhold or set off payments against warranty claims or other cross claims not accepted by us in writing. The Buyer explicitly renounces the objection according to § 1052 ABGB (General Civil Code).
- c. In case of default of payment, we shall be entitled to revindicate the goods immediately after granting a 14 days grace period and to collect them without prior notice; in such case, the Buyer shall bear any costs arising.
- d. In case of a default of payment, the interests and any other fees payable on arrears as provided for by law shall be charged. As further damages for delay, the Buyer shall at any rate refund to us the collection costs and recovering charges arisen.

### 6. Retention of Title

- a. We retain legal title to all goods delivered by us until the Buyer has completely discharged all his financial obligations. In case of deferred payments or in case of bankruptcy proceedings applied for or initiated against the Buyer, Marienhütte is entitled to demand the Buyer to return to us the retained product and/or to confiscate assigned claims. In case of execution, attachment or some other kind of seizure, the Buyer undertakes to confirm that we are retaining title to the goods, and to notify us in writing, without delay. In addition, the Buyer is obliged to refund to us all costs related to the enforcement of our title to the said goods (e.g. costs for pick-up of the goods) and/or costs of a potential legal proceeding instituted to enforce our title to the goods (e.g. costs for a claim to separate satisfaction / claim for segregation).
- b. Should the Buyer - by processing or combination - acquire sole title to the goods supplied to him under retention of title, he would have to pass joint title to us already now in the ratio that the value of the goods we are retaining title to bears to the value of the other goods at time of processing or combination. In such cases, the Buyer shall keep the new objects/goods, which are likewise to be considered as being goods we are retaining title to in accordance with the present terms of trade, in safe custody at no charge and by using the care and caution of a conscientious businessman. The gross invoice amount is to be considered as value of the goods we are retaining title to.

- c. Should Marienhütte's ownership expire as a result of combining or blending, the Buyer shall transfer already now ownership rights for the new item or product in the amount of invoice value of the retained goods and shall hold them in custody on our behalf free of charge. The claims arising from resale of the retained goods and all guarantees which the Buyer acquires for the claim, are assigned to us already now. They serve as guarantee to the same extent as the retained goods.

### 7. Warranty

- a. Our warranty does not cover any defects caused by inappropriate use by the Buyer.
- b. Any defects shall be notified without delay in writing at time of delivery and in a substantiated manner. Moreover, the provision of § 377 UGB (Commercial Code) and case law based on this provision are agreed between the parties. If the Buyer does not allow us to check the claimed goods without delay, he will lose his rights from the material defect. If, in case of unascertained goods, the party to the contract claims redhibition or an appropriate price reduction, we will be entitled to discharge ourselves from our obligation to perform by replacing the defective objects/goods within a reasonable period of time. If the Buyer claims a price reduction, we will be entitled to choose at our own discretion between subsequent delivery of the missing goods or improvement of the defective product. Any defects of individual elements only entitle the Buyer to reject the entire shipment if the whole shipment is useless due to the nature of defect.
- c. Stipulated properties and/or warranted qualities in accordance with § 922 ABGB (General Civil Code) shall be explicitly documented in writing as such warranted qualities since otherwise we will not assume any liability for such properties.

### 8. Liability

- a. The Buyer shall have no claims for damages whatsoever in respect to, but not limited to, delayed delivery, impossibility of performance of contract, defects, consequential damage of any nature, personal injury or damage to goods that are not subject to the contract, unless it is evident from the circumstances of the case that we have acted willfully or that we have been guilty of gross misconduct. The provisions referring to the inversion of the onus of proof according to § 1298 ABGB (General Civil Code) shall be excluded.
- b. Our liability shall be limited in any case to typical contractual damage foreseeable at conclusion of contract. Our liability shall be excluded in particular for consequential damages.
- c. Unless otherwise agreed, contractual claims and obligations related to delivery of the goods are subject to a limitation period of one year after delivery.

### 9. Force Majeure

In case of force majeure events, none of the contracting parties shall be held liable for the infringement of contractual obligations. As cases of force majeure shall be considered in particular labor disputes and all circumstances independent of the intentions of the parties to the contract, such as war, rebellion, seizure or confiscation, embargo, lack of means of transportation, machine break-down, general shortage of supplies, restrictions in power consumption, earthquake, fire and other natural disasters.

### 10. Place Of Performance, Applicable Law, Written Form And Jurisdiction

- a. The competent court of Graz shall have exclusive jurisdiction in any action arising out of this contract. This contract shall be governed by the substantive law of Austria. The UNCITRAL convention on contracts regarding the international purchase/sale of goods shall be excluded by mutual agreement.
- b. Verbal agreements shall only be binding for us when confirmed in writing; this requirement may be waived only explicitly and in writing.
- c. The voidness of individual clauses of our General Terms of Sale and Delivery shall not impair the effectiveness of the remaining clauses. A stipulation which comes particularly close to the void clause shall be applied instead of the void clause.

### Data protection:

We shall be entitled to save, transport, edit and delete personal data of the Buyer in the framework of business operations