



# GENERAL TERMS AND CONDITIONS

## A. General provisions

The general terms and conditions relating to sales, delivery, and payment of Kind & Co., Edelmetallwerk, Kommanditgesellschaft are in accordance with the recommendations of the Steel Association Wirtschaftsvereinigung Stahl in Düsseldorf and the publication of the Federal Cartel Office dated September 13, 2002.

### I. Contract conclusion

1. Our supplies and services are based exclusively on the following terms and conditions. The purchaser's terms and conditions are hereby waived.
2. Our quotations are without commitment.
3. Purchaser's quotations are deemed to be accepted by us only if explicitly confirmed. No response to such a quotation does not constitute acceptance. The same applies to confirmation by electronic means unless electronic transmission has been agreed for the business relationship by both sides and transmission is made to the address explicitly defined for the acceptance of such confirmation.
4. Our declarations with respect to conclusion, modification or termination of contracts must be made in writing; however they need no qualified electronic signature unless otherwise agreed with the purchaser.

### II. Terms of payment

1. The prices quoted in our order confirmation shall apply. Our prices including all ancillaries are net without VAT which will be charged if legally required. Any extra charges due to additional processing shall be borne by the purchaser.
2. The full purchase price will be due at the expiry of the terms of payment at the latest.
3. If it has been agreed that the goods shall be released for despatch by the purchaser within a certain period of time after we have reported readiness for despatch (orders on call), we may invoice for the goods from the date on which we have notified readiness for despatch.
4. Payments shall be made without any deduction so that our account is credited with the full amount on the due date. The purchaser is not entitled to offset payments against counterclaims unless they are contested or confirmed as being legally valid. Any retention rights shall only apply if they are associated with the same contractual relationship.
5. If the payment term is exceeded, interests at a rate of 8% above the basic rate of Deutsche Bundesbank (§247 BGB) will be charged.
6. If our claim is jeopardized due to circumstances which have arisen later and which create doubts as to the purchaser's credit worthiness, all of our claims will immediately become due for payment, irrespective of the maturity of any bills that may have been accepted.
7. In the event of circumstances described in number 6 or section A IV 9, we may revoke collection authorisation (section A IV 7) and request down payments for any open deliveries.  
These consequences may be avoided by the purchaser by providing a form of security for the amount of our claim which is at risk.  
If in the event of circumstances described in number 6 or section A IV 9 the purchaser fails to make a down payment or to provide an appropriate form of security, we are entitled to withdraw from the contract, and any claims for compensation that the purchaser may have will be void.
8. The legal provisions on default in payment shall remain unaffected.
9. In the case of a default in payment which is due to a noticeable deterioration of the purchaser's assets, we may withdraw from the contract without any notice period.

### III. Securities

We may claim securities against our receivables, which are customary in terms of type and scope, even if they are conditional or limited in time.

### IV. Retention of title

1. All goods supplied shall remain our property (conditional goods) until payment of all claims, in particular of the balance of receivables due to us in the framework of the business relationship has been made in full. This also applies to future and conditional claims, e.g., resulting from reverse bills of exchange.
2. Processing of conditional goods shall be carried out in the sense of § 950 BGB without commitment from our side. Any processed goods shall be considered as conditional goods in the sense of number 1.
3. If the purchaser processes, combines or mixes our materials with foreign materials, we are entitled to co-ownership in proportion to the invoice value of the conditional goods compared with the invoice value of the other goods used. If our property effectively ceases to exist due to combining, mixing or processing, the purchaser hereby assigns to us his property rights or expectant rights to the new goods to the extent of the invoice value of the conditional goods (in the case of processing in relation of the invoice value of the condi-

tional goods to the invoice value of the other goods used) and shall store them free of charge for us. Our co-ownership of these goods shall be deemed as conditional goods in the sense of number 1.

4. The purchaser is entitled to sell conditional goods in the course of usual business transactions and in compliance with his standard terms and conditions unless he is in default and provided that he reserves the title, and any claims from reselling according to numbers 5 and 6 are transferred to us. He may not otherwise dispose of conditional goods. Reselling in the sense of this section A IV shall include use of conditional goods to fulfil contracts for work and labour.
5. Any claims of the purchaser resulting from reselling of conditional goods shall hereby be transferred to us. They serve as a security to the same extent as conditional goods in the sense of number 1.
6. If conditional goods are re-sold by the purchaser together with other goods, the claim from reselling is transferred to us in the proportion of the invoice value of the conditional goods to the invoice value of the other goods. In the case of reselling goods where we hold co-ownership according to number 3, a portion of the claims corresponding to the co-ownership shall be transferred to us.
7. The purchaser may collect receivables from reselling unless we revoke collection authorisation in cases quoted in sections A II 6 and A IV 9. On our request, he shall immediately inform his purchasers of the transfer to us unless we do so ourselves and shall provide us with the information and documents that may be required for collection.
8. The purchaser is not authorised to transfer the claim.
9. If the purchaser is in default of payment and if this implies an exposure of a considerable portion of our claims, we are entitled to prohibit processing of the goods supplied, to get the goods back and to access the purchaser's premises if needed. Such a collection is not to be deemed as a rescission from the contract.
10. The purchaser shall immediately inform us about any distress or damnification by third parties.
11. If the amount of securities exceeds the secured claims by more than 10%, we agree to release securities at the purchaser's request at our discretion.

## B. Execution of delivery

### I. Lead times, delivery dates

1. Lead times begin on the date of our order confirmation, but not before full clarification of all order details; this also applies to delivery dates.  
All lead times and delivery dates are quoted subject to unforeseeable production disturbances and timely delivery from our sub-suppliers of the required raw material and, if small purchasing quantities have been agreed or are customary in the trade, subject to the ability to deliver and timely delivery by our sub-suppliers.
2. If the purchaser is in default with his contractual obligations – including the obligation to co-operate and ancillary obligations – e.g. opening of an L/C, provision of national or foreign certificates, down payments or similar, we may correspondingly delay our lead times and delivery dates according to the requirements of our production process without prejudice to our rights resulting from the purchaser's default.
3. The time of despatch ex works shall be decisive for demonstrating compliance with lead times and delivery dates. If goods cannot be collected which is not due to a failure on our part, the lead times and delivery dates shall be deemed to have been observed at the time of notification of readiness for despatch.
4. In cases of Force Majeure, the contractual obligations of both parties shall be suspended, and dates and periods for compliance with contractual obligations shall be postponed accordingly; cases of Force Majeure include industrial action on our own and others' premises, transport delays, machine breakages, government action and other circumstances beyond the control of either party. The other party shall be immediately informed of the circumstances of Force Majeure. Both parties to the Contract may withdraw from the Contract at the earliest six weeks after receipt of such information.
5. In the case of non-compliance with lead times, the purchaser may only exert his rights according to § 281, 323 BGB after he has granted us an adequate period of time to make delivery. If lead times are not observed, the purchaser shall have the rights according to § 281, 323 BGB only once he has granted us a reasonable period for delivery which – other than § 281, 323 BGB – involves his declaration that acceptance of the delivery will be refused after expiry of this period; after fruitless expiry of the period a claim for fulfilment shall be excluded.
6. The purchaser may withdraw from the contract without granting a period of time if complete delivery definitely becomes impossible for us prior to transfer of the risk. Furthermore, the purchaser may withdraw from the contract if in



the case of an order part of the delivery becomes impossible and he has a justifiable interest in declining partial delivery. If this is not the case, the purchaser shall pay the contract price corresponding to the partial delivery. The same applies to an inability from our side. As for the rest, section C shall apply.

## II. Dimensions, weights, quality

Any deviations in terms of dimensions, weight and quality are permissible to the extent of DIN standards or common practice. The weights are determined on our calibrated scales and are decisive for invoicing. The weight is demonstrated by presentation of the weighing protocol. Unless individual weighing is common practice, the total weight of the delivery shall apply. Differences from the calculated individual weights are distributed proportionally.

## III. Despatch, packaging and transfer of risk

1. We select the forwarder or carrier.
2. If loading or transport of the goods is delayed for reasons imputable to the purchaser, we may at the purchaser's cost and risk store the goods at our discretion taking all measures to maintain the goods and invoice the goods as delivered.  
The same applies if goods that have been reported to be ready for despatch are not collected within four days. The legal provisions applicable to default of acceptance shall remain unaffected.
3. If customary in the trade, we will supply the goods packed and protected from corrosion; the cost shall be borne by the purchaser. Packaging, protection and transport aids will not be taken back. Any extra packing beyond that required for transport or any other special protection, e.g., for long-term storage, must be explicitly agreed.
4. In the case of damage during transport, the purchaser shall immediately arrange for the competent offices to register the facts.
5. Upon delivery of the goods to the forwarder or carrier, but at the latest when the goods leave the factory or the warehouse, the risk is transferred to the purchaser.

## IV. Claims for damage

1. The goods meet the terms of the contract if at the time of transfer of the risk they do not differ or only differ to a negligible extent from the specification; compliance with the contract and the freedom from defects of our goods are exclusively based on the explicit agreements in terms of quality and quantity of the ordered goods. Liability for a certain application or the suitability of the goods for a certain purpose is only assumed insofar as this has been explicitly agreed; otherwise the risk for suitability and usability exclusively lies with the purchaser. We do not assume any liability for deterioration or loss or improper handling of goods after transfer of the risk.
2. The contents of the agreed specification and any explicitly agreed application do not give rise to a guarantee; a guarantee will only be assumed through a written agreement.
3. The purchaser must check the received goods immediately after receipt. Any claim for damage must be notified immediately in writing and any hidden defects must be notified immediately after their discovery.  
After the agreed acceptance, the notification of any defects which may have been detected during such acceptance shall not be considered.
4. In the case of complaints, the purchaser shall immediately give us the opportunity to check the goods which are the subject of the complaint; on our request such goods or a specimen of the same must be provided at our cost. In the case of unjustified complaints, we reserve the right to charge the purchaser with the freight and movement costs as well as the expenses incurred in checking.
5. In the case of goods which have been sold as downgraded material the purchaser shall have no right to claims for damages which he may specify and for any damages that may normally occur.

6. In the case of a material defect, we may at our discretion and taking account of the purchaser's interests provide subsequent fulfilment either by delivery a replacement or by repair.  
If we fail to successfully provide subsequent fulfilment within a reasonable period of time, the purchaser may grant us a reasonable period of grace for subsequent fulfilment and after fruitless expiry of such period either reduce the purchase price or withdraw from the contract; no other claims shall exist. Section C shall remain unaffected.
7. In the case of a defect in title, we have the right to provide subsequent fulfilment by eliminating the defect in title within two weeks from receipt of the goods.  
Apart from this number 6, clause 2 shall apply accordingly.
8. The limitation of time in the case of defective delivery shall end – except in the case of intent – after expiry of one year after delivery. Repair or delivery of replacement shall not give rise to a new beginning of the limitation of time.
9. Any recourse action against us by the purchaser according to § 478 BGB shall be limited to the legal extent of claims for damage put forward by third parties against the purchaser, subject to the condition that the purchaser has complied with his duty to give us notice of defects according to § 377 HGB.
10. In addition, the following general limitations of liability shall apply.

## C. General limitations of liability

1. Unless otherwise provided for in these terms and conditions, our liability for compensation due to infringement of contractual or non-contractual duties shall be limited to cases of intent or gross negligence by our legal representatives or agents and to culpable infringement of major contractual obligations. In the case of culpable infringement of major contractual obligations, we shall be liable – except in the case of intent or gross negligence by our legal representatives or agents – only for foreseeable damage typical for the contract.
2. The above limitations of liability do not apply to bodily injury or when providing a guarantee for quality or durability.
3. If we are not informed on the intended use of our products, we shall only be liable under the above conditions in the framework of the technical specification and a specific, agreed application. Exceptional risks, in particular concerned with the use in aviation or shipbuilding, shall only be considered by us if they have been notified in writing prior to concluding the contract.
4. Claims resulting from bodily injury or damage to private property according to the Product Liability Act shall remain unaffected.

## D. Miscellaneous

### I. Export certificate

If a purchaser not resident in the Federal Republic of Germany (purchasers out of the territory) or his agent collects goods and transports or sends these to the territory abroad, the purchaser shall provide the export certificate requested by the tax authorities. If this certificate is not supplied, the purchaser shall pay the VAT at the rate applicable to deliveries within the Federal Republic of Germany.

### II. Applicable legislation

The legislation of the Federal Republic of Germany shall apply, excluding the "United Nations Convention On Contracts For The International Sale Of Goods, 1980 (CISG)".

### III. Place of performance, place of venue

The place of performance shall be the place of our factory carrying out the work, in terms of the purchaser's payment duty however it shall be Wiehl/Bielstein. The place of venue for both parties to the contract shall be Gummersbach. We are also entitled to sue the purchaser at his general place of venue.

### IV. Severability

If any provision in these General terms and conditions or in any other agreement proves to be or become invalid, such provision shall not affect the validity of the remaining provisions. The contract parties are obliged to replace the invalid provision by a valid provision which shall meet as closely as possible the economic purpose of the original one.

According to § 33 of the Federal Data Protection Act (BDSG), we hereby confirm that data required in the framework of handling the business will be processed and stored according to § 28 (BDSG). Personal data will be treated confidentially.

Date: September 2005