

General Sales and Delivery Terms of Hoesch Spundwand und Projekte GmbH

As of March 2020

Section 1 Scope

1. These terms apply exclusively to companies, legal entities in public law or public law special assets as defined by Section 310 Para. 1 of the German Civil Code (BGB) and to all products and other deliveries and services provided by Hoesch Spundwand und Projekte GmbH (hereinafter referred to as "HSP"). However the special order terms and conditions as listed in the order letter have priority.
2. These sales terms also apply to all future transactions with the buyer if the legal transactions are related. We explicitly only recognise contrary terms of the buyer or those that vary from our terms if we have explicitly agreed to them in writing. Our silence with regard to the buyer's contrary or varying terms, even if they are included in an order confirmation, does not represent agreement.
3. Individual agreements made in particular cases with the buyer (including subsidiary agreements, additions and changes) always have priority over these terms. Such agreements are only effective if they have been made in writing. This also applies to waiving the written form requirement.

Section 2 Offer and conclusion of contract

Our offers are subject to change and not binding; documents included in our offers such as images, drawings, weights and measurements are only approximate unless they are explicitly referred to as binding.

Section 3 Confidentiality, documents provided

1. All documents provided by the buyer in relation to issuing the order - including in electronic form - such as calculations, drawings, images, brochures, catalogues, templates, samples and other similar documents etc. remain, unless otherwise agreed, our property; copyrights remain in place in all cases. These documents may not be made accessible to third parties unless we issue explicit written permission to the buyer on this.

The documents provided by us must be destroyed or returned to us without delay by the buyer at our request as soon as all rights and duties from or in connection with the contract have been met or it is clear that no contract will be established (offer stage). Any files created and all copies are to be deleted from all data media or physically destroyed.
2. The buyer is obliged to treat all non-public technical or commercial information of which it becomes aware during the business relationship in confidence and not make it accessible to any third party without our prior written consent. The buyer will impose this restriction on its suppliers.
3. If it is agreed in the individual contract that the buyer will provide us with documents, work instructions, drawings or other information (hereinafter referred to as the "document") and materials, it will do so free of charge to us, properly, in good time and free from the rights of third parties. If the buyer infringes these obligations in full or in part it is liable for all of the damages arising from the infringement or is obliged to indemnify us in full for claims by third parties. The buyer therefore bears the sole risk for the correctness, suitability, agreement with contractual requirements etc. for the documents and materials it provides.

Section 4 Prices and payment

1. If nothing further has been agreed in writing, our prices are EXW (INCOTERMS 2020) plus any value added tax to be incurred and exclude lading, packaging, freight, insurance or other subsidiary services. Prices stated in catalogues, brochures or price lists simply provide information and in all cases only state the pricing when they were issued. We will inform the buyer of the prices and conditions currently applicable on request.
2. The purchase price must be paid within 10 days of delivery such that the amount is available to us on the date that it is due. Payments must be made by bank transfer; cash is not accepted. If in default, interest and a flat-rate charge is incurred as permitted by law (currently 9% above the relevant base rate p.a. plus €40.00). The assertion of higher default claims is reserved. If the buyer is in default of significant payments or there are grounds to justify doubt in the buyer's ability to pay, we are entitled to request appropriate collateral for the payments still outstanding, e.g. in the form of a bank guarantee. If the buyer does not provide collateral within the period set for this, we are permitted after prior notification to stop our deliveries and services and/or terminate the contract.
3. The purchase price must be paid exclusively to the account stated by us in the order confirmation. The deduction of discounts is only permissible by special written agreement.
4. We reserve the right to make price changes due to material changes to salaries, materials and sales costs for deliveries that have not yet taken place. Delivery delays for which we are not responsible also permit us to modify the prices and delivery periods as well as to provide modified or additional deliveries and services.
5. The buyer is only permitted to offset against claims that are undisputed or legally binding. The buyer is only permitted to exercise a retention right if the counterclaim is based on the same contractual relationship.

Section 5 Delivery period

1. All stated delivery deadlines and periods refer to the dispatch of the goods from the factory and are approximate. The start of the delivery periods and compliance with the delivery deadlines require final agreement on all order details to us and the on-time and proper fulfilment of the buyer's obligations, in particular the on-time and contractual receipt of all documents to be provided by the buyer, necessary approvals, licences, on-time clarification and approval of the plans, on-time and contractual provision of materials by the buyer (of agreed), compliance with the agreed payment terms and other obligations of the buyer. If these requirements are not met, are late, incomplete or defective, the

delivery periods are extended accordingly. We are also entitled to request the reimbursement for any damages that have been incurred including any additional costs. We reserve the right to make additional claims.

2. If the delivery is delayed for reasons for which we are not responsible, in particular if the goods are not collected or cannot be sent in good time, the delivery deadline and periods are considered to have been met with the notification of readiness to dispatch and the period in Section 4 Number 2 starts to run accordingly. If the dispatch is delayed at the buyer's request the storage costs and at least 1/3 of the delivery value is charged from readiness to dispatch. The risk of worsening and random destruction transfers to the buyer on readiness to dispatch.
3. If the delivery is delayed for reasons for which we are responsible, the buyer can, if and to the extent to which damages have been incurred due to non-compliance with the delivery deadline, request compensation for the default in the amount of 0.5% of the delivery value for each completed week but not more than 5% of the delivery value of that part of the delivery that cannot be used due to the delay. Liability for damage due to default beyond this is excluded. In addition, claims for damages due to default, except in cases of deliberate action or gross negligence, are excluded as are claims for expenses incurred in vain and claims for damages rather than performance.

If delivery is delayed due to unforeseen events, for example force majeure (weather, natural disasters, epidemics, wars, civil disputes, strikes or lockouts), business disruption/interruption for which we are not responsible such as a lack of raw materials or energy, machine or roller breakage, the delivery deadlines and period are delayed accordingly and a supplement for restarting work is incurred; if this results in an increase in material and/or salary costs, the prices are modified accordingly. If the delay is more than 6 calendar months, the contractual parties will come to a further mutual agreement. If the parties cannot find a mutual solution, each party can terminate the contract in writing with an appropriate notice period of 6 weeks.

Section 6 Retention of title

1. We retain ownership of the goods delivered until the full payment of all claims from the relevant business relationship. This also applies to all future deliveries even if we do not constantly explicitly state this. Notwithstanding any other rights, we are entitled to take back the item if the buyer acts in a manner contrary to the contract.
2. The buyer is obliged to treat the goods carefully if ownership has not yet been transferred to it. In particular it is obliged to adequately insure the goods against theft, fire and water damage for the replacement value at its own expense. If maintenance and inspection work is required, the buyer must carry out this work on time and at its own expense. If the ownership has not yet been transferred, the buyer must inform us in writing without delay if the delivered item is pledged or exposed to other interventions by third parties. The buyer will reimburse us for any costs incurred by us when defending such claims by third parties unless the intervention was exclusively our responsibility.
3. The buyer is entitled to sell on the retained goods in normal business transactions (i.e. only if it is a dealer) and as long as it is not in payment default to us. The claims against the recipient from the sale on of retained goods are already assigned by the buyer to us in the amount of our pending claims from all deliveries and services to it (including incidental expenses and value added tax). This assignment applies independently of whether the goods are sold on with or without processing. The buyer remains permitted to collect the receivable even after assignment. This does not affect our entitlement to collect the receivable ourselves. We will however not collect the receivable as long as the buyer complies with its payment obligations from the income received, is not in default of payment and in particular no insolvency proceedings have been started and payments have not stopped.
4. The processing or reshaping of the item purchased by the buyer always takes place in our name and on our behalf without creating obligations for us. In this case, the vested rights of the buyer in the item purchased continue in the reformed item. If the goods are processed with other objects that do not belong to us, we acquire joint ownership of the new item in the same ratio as the value of the goods to the other processed items at the time of the processing. This also applies to any commingling. If the goods are commingled such that the buyer's item is viewed as the main item, it is agreed that the buyer transfers pro rata joint ownership to us and maintains the sole ownership or joint ownership thus created for us. To secure our receivables against the buyer, the buyer also assigns such receivables to us that are produced by connecting the retained goods with a property against a third person; we already accept this assignment.
5. We are obligated to release the collateral at the buyer's request if the value of the claims being protected (including interest, costs, e.g. of legal measures etc.) is exceeded by more than 20%.

Section 7 Guarantee and liability

1. The buyer's warranty rights require that it has on-time and properly complied with the investigation and complaint obligations stated in Section 377 of the German Commercial Code (HGB). If there are obvious defects, we can only consider notification of defects if they are received by us in writing at the latest within 2 days of receiving the goods; if there are hidden defects the written notification must be received by us within 7 days of discovery.
2. Variances from the contractually agreed performance are permissible if they are reasonable for the buyer when taking its interests into account. This is in particular the case for commercial or technically unavoidable variances in terms of quality, surface characteristics, colour, weight, measurements and numbers.
3. If and to the extent to which approval is required and/or has been explicitly agreed, this takes place at the latest on delivery of the goods as stated in Section 4 Number 1.
4. Defect claims lapse 12 months after the goods have been delivered as per Section 4 Number 1 unless the goods are used in which case all liability is excluded. The statutory limitation period applies to claims for damages from deliberate action and gross negligence and for injury to life, limb or health that is based on a deliberate or negligent infringement of duty by the user. If laws under Section 438 Para. 1 No. 2 BGB (construction and related matters), Section 445 b BGB (recourse action) and Section 634a Para 1 BGB (construction defects) stipulate longer periods in a binding manner, these periods apply. Our consent must be obtained for any return of goods.
5. If, in spite of the care applied, the delivered goods have defects that already existed when the risk was transferred, we will at our own discretion improve the goods or deliver replacements, subject to on-time complaints being received. We must always be provided with the opportunity for subsequent fulfilment within an appropriate period of time. Recourse claims remain unaffected by this provision without restriction.
6. If the subsequent fulfilment fails, the buyer can - notwithstanding any claims for damages - reduce the fee. The right of the buyer to withdraw is excluded in all cases.

7. Defect claims do not exist for simply insignificant variances from the agreed characteristic, only minor effects on usability, natural wear and tear or damage incurred after the transfer of risk as a result of defective or negligent treatment, excessive use, unsuitable operating materials, defective construction work, unsuitable construction foundations or due to special external influences not required in the contract. If the buyer or third parties undertake improper repair work or changes, there are also no claims for damages for these and the resulting consequences.
8. Claims by the buyer due to costs, including transport, travel, work and material costs, required for subsequent fulfilment are excluded if the expenses increase because the goods that we delivered were subsequently moved to a location different from the buyer's branch unless the transfer corresponds to proper use. Our liability for such costs is in any case limited to a total of max. 100% of the delivery value.
9. We accept no warranty for a particular usage or suitability of the deliveries. The usage and deployment risk remains with the buyer.

Section 8 Liability

We are liable under the statutory provisions for personal injury for which we are responsible and for deliberate and grossly negligent damaging activities. For damage to property caused by our negligence, we are liable for the restoration of the item up to a maximum of 15% of the delivery value or, if and to the extent to which the property damage is covered by our insurance, in the amount that the insurance company pays out as reimbursement.

In addition, claims for damages and reimbursement of costs against us, in particular due to the infringement of contractual duties and tort are excluded as are claims for the reimbursement of indirect and subsequent damages such as production stoppage, asset damage, financial damage, claims from third parties (such as customers or suppliers) or loss of profit.

If flat-rate damages or contractual penalties are agreed in the contract, the buyer's claims from regulated contractual duty obligations are therefore regulated and covered finally. Additional claims by the buyer due to the regulated contractual duty infringement are excluded.

The liability restrictions stated above do not apply if there is binding liability due to statutory regulations and in the case of deliberate action, gross negligence or injury to life, limb or health.

Section 9 Miscellaneous

1. This agreement and the complete legal relationship between the parties are subject to the law of the Federal Republic of Germany excluding joint UN commercial law (CISG).
2. The place of fulfilment for our deliveries is the delivery plant if ex works delivery is agreed and Dillingen/Saar for all other performances.
3. The exclusive court of jurisdiction for all disputes from this agreement is Dillingen/Saar if nothing further is stated in the order confirmation.
4. All agreements made between the parties for the purpose of implementing this agreement are laid down in writing in this contract.
5. If an individual provision of this contract is or becomes invalid or this contract contains a gap, this does not affect the other provisions. The parties are obliged to agree a legally effective provision to replace the invalid one that comes as close as possible to the economic purpose of the original provision or fills the gap.