

General Terms and Conditions of Sale and Delivery for KYNAST Steel GmbH

Section 1: General Information – Scope of Application

(1) These Terms and Conditions of Sale and Delivery are exclusively applicable; we do not recognize any of our customer's conflicting terms and conditions or terms and conditions which deviate from our Terms and Conditions of Sale and Delivery, unless we have explicitly agreed to such terms and conditions in writing. Our general terms and conditions are also applicable if we, with knowledge of conflicting or deviating terms and conditions of our customer, complete delivery unconditionally.

(2) All agreements which are made between us and the customer concerning the completion of these orders have to be in written form. Supplementary agreements, reservations, changes, or amendments which have been made on the telephone with representatives or with employees who are not authorized to be a representative are only valid if these are recognized in writing.

(3) These Terms and Conditions of Sale and Delivery are only applicable with respect to merchants as in the sense of section 24 of the *Gesetz zur Regelung des Rechts der Allgemeinen Geschäftsbedingungen* [German law for the regulation of general terms and conditions of business].

(4) Our general terms of sale and delivery are also applicable for all future business agreements with the customer.

Section 2: Bids - Bidding Documents

(1) All bids which we offer are not binding. A contract comes into existence only through our confirmation of an order in writing (see section 4).

(2) If the order can be characterized as a bid according to section 145 of the *Bürgerliches Gesetzbuch* [German Civil Code], then we can accept it within 4 weeks.

(3) We retain the copyright on illustrations, drawings, calculations, and all other documents; these may not be made available to third parties. This is particularly applicable for those written documents which are classified as "confidential". The customer is required to receive our explicit consent in writing before giving these to third parties.

Section 3: Prices - Terms of Payment

(1) As long as the confirmation of the contract does not result in something else, our prices are valid "ex works", excluding packaging, freight, insurance, etc., if nothing else is explicitly agreed upon.

(2) If we raise or lower our prices in general between conclusion of a contract and delivery, the prices valid on the day of delivery shall be charged. Contracts in which no fixed prices are explicitly set forth shall be charged according to the prices valid on the day of delivery.

(3) We are allowed to adjust our prices accordingly if there are unforeseeable price increases in raw materials, energy, etc., as well as if there are shortages on the world markets concerning the supply of bought-in material.

(4) All stipulated prices are net prices. Value added tax is to be paid separately according to the appropriate legal amount and shall be calculated separately in the invoice.

(5) Additional costs due to changes in the contract by the customer and after the contract has been accepted including all incurred machine down-time costs shall be invoiced additionally.

(6) As long as the confirmation of the contract does not result in something else, the purchase price without deductions (net) must be paid within 20 days of the date of invoice. If the customer fails to pay on time, we have the right to charge default interest of an amount which is in accordance with bank practices, at least 5% above the base interest rate of the European Central Bank plus value added tax. If we are able to prove more damages caused by default on payment, we have the right to claim these. However, the customer has the right to prove to us that the damages we suffered caused by the customer's default on payment were either significantly smaller or non-existent.

(7) The customer only has the right to setoff if his/her counterclaim has a final and binding effect, is undisputed, or is recognized by us. The customer does not have the right of retention in case of disputed counterclaims.

(8) All of our claims shall be due if the customer declares himself/herself insolvent by insolvency, by a petition for instituting composition proceedings, or in any other way.

Section 4: Confirmation of the Contract - Time of Delivery

(1) Orders are not valid until we have confirmed them in writing and their acceptance concerning delivery is not binding. Delivery periods cannot begin earlier than the date of our confirmation of the contract. If a confirmed contract is modified, the delivery period begins with the confirmation of the modification. The delivery period shall be suspended for the duration of tests on production prototypes, etc., by the customer; this suspension shall be in effect from the date of shipment to the customer until the day that the test documents including the binding declaration of approval arrive in our hands. The delivery period shall also be suspended for the duration of effects resulting from force majeure or other exceptional circumstances which neither we nor our suppliers are responsible for (ex: strikes, machine defects, transportation impediments). If the effects of force majeure last longer than 6 months, the contracting parties have the right to revoke the contract.

(2) All technical questions are required to be clarified before the designated delivery period can begin.

(3) We reserve the right to exceed the prescribed delivery periods by up to 6 weeks. The occurrence of all other unpredictable events which are outside of our realm of influence, as far as not insignificant restriction or delay of delivery caused by this is concerned, shall also cause an appropriately reasonable extension of the prescribed delivery period. This shall also be the case if similar delivery problems occur with sub-suppliers. This suspension within the course of the delivery period shall end as soon as the problems concerning delivery have passed.

(4) If the shipment or delivery is postponed due to a request of the customer, we have the right to charge the customer costs accrued by storage of the products starting one month after notification that we are ready to deliver as well as 1% interest based on the value of the invoice plus legal value added tax for each month that delivery is delayed. We have the right to cancel a contract after an appropriate deadline is set and then futilely surpassed and otherwise to make use of the products which were to be delivered and to claim compensation due to non-fulfillment.

(5) Partial deliveries are acceptable, as long as this is reasonable for the customer.

(6) If the customer sets an appropriate grace period with the threat of termination of contract after we have already defaulted, he/she has the right to terminate the contract after the deadline has passed without results. The customer only has a right to claims for

damages due to failure to perform in the amount of foreseeable damages if the default was caused intentionally or by gross negligence; in addition, liability for damages is limited to 50% of the incurred damages.

(7) The limit set for liability according to paragraph 6 is not valid if a transaction for delivery by a fixed date has been set; the same is true if the customer can claim that his/her interest in having the contract fulfilled no longer exists due to a default which we are responsible for.

(8) For us to carry out our delivery commitments, the customer is required to complete his/her obligations in a timely and proper fashion.

(9) If the customer fails to accept delivery or if he/she does not fulfill any other obligations to cooperate, then we have the right to demand the damages which we incurred including possible storage costs and all other additional expenditures. In such a situation, the risk of accidental loss or accidental deterioration of the purchased products is carried by the customer starting at that point in time at which he/she fails to accept delivery.

Section 5: Shipping, Packaging - Passing of Risk

(1) As long as the confirmation of the contract does not result in something else, delivery shall be "ex works".

(2) The customer shall carry the cost and the risk for shipment, for both carriage-paid deliveries and for unfranked deliveries. If the inspection office of the federal railroad, the federal postal service, the shipper, or any other carriers accepts the goods without objection, then this is valid evidence that the goods were in undamaged condition upon shipment.

(3) Packaging for shipment and all other packaging done in accordance with packaging regulations shall not be taken back. The customer is required to dispose of packaging at his/her own expense.

(4) If requested by the customer, we will provide insurance for the shipment; the costs incurred for this shall be carried by the customer.

(5) For each shipment of palletized goods, the customer has to return to us stage by stage the same quantity of pallets of equal quality as those which he/she received. For calculating palletized shipments we keep a pallet account for the customer according to the delivery invoices which the customer verifies having received; the number of received pallets and returned pallets is recorded in this pallet account. The price for purchasing replacement pallets for pallets which are missing or which are returned damaged plus any extra expenses shall be charged to the customer. The same is valid for shipments in skeleton containers.

(6) Risk is transferred to the customer upon shipment/pick-up of the delivery. This is also the case for partial deliveries as well as if we have agreed to be responsible for other services such as transportation or shipment costs.

(7) If the goods are ready for shipment but shipment is postponed due to a request by the customer or due to circumstances which the customer is responsible for, then risk in the full extent is transferred to the customer at the moment that the customer receives notice that the goods are ready for shipment.

Section 6: Warranty

(1) The customer's warranty rights require him/her to have duly performed his/her obligation of inspection and notification of damage as required by sections 377 and 378

of the *Handelsgesetzbuch* [German Commercial Code]. Notification of damage has to be made in writing immediately and at the latest within 8 working days after receipt of the delivery. If any hidden damage is found, it must be reported to us immediately after its discovery. The right to notification of damage expires 2 months after receipt of the goods. If only part of the delivery is damaged, the customer does not have the right to reject the entire delivery.

(2) The shipper is to be notified in writing of damages which occurred during shipment. The details are to be determined by ascertaining the facts. The customer is required to institute all necessary steps.

(3) If we are responsible for the damage, we have the right to choose to either remove the damage or to replace the shipment. If we choose to remove the damage, we are required to carry all expenditures necessary for removal of the damage, particularly costs for shipment, transportation, and labor, as long as these are not increased by the purchased goods having been moved to a location other than the place of payment.

(4) If we are not prepared or not able to remove the damage or to replace the delivery, or particularly if this is delayed for longer than a reasonable period of time due to circumstances which we are responsible for, or if the removal of damage or replacement of the delivery fails in any other way, the customer has the right to choose to demand either recession (cancellation of the contract) or a pertinent reduction of the purchase price (decrease).

(5) As long as nothing contrary results in what follows, any further claims of the customer - on whatever legal grounds - shall be excluded. For this reason we are not liable for damages which do not occur to the delivered goods themselves, and we are particularly not liable for lost profit of the customer or other losses to assets of the customer.

(6) Any foregoing release from liability is not valid if the damage was caused intentionally or by gross negligence. Neither is this valid if, because of the lack of warranted characteristics, the customer claims for damages due to failure to perform according to section 463 and section 480 paragraph 2 of the *Bürgerliches Gesetzbuch* [German Civil Code].

(7) If we negligently violate a cardinal obligation or any obligation of essence to the contract, then our liability to compensate is limited to damages which are typical of contracts and are foreseeable.

(8) The period of warranty is 6 months, starting with the transfer of risk. This period is a period of limitation and is also valid for replacement claims due to consequential harm caused by a defect, as long as no tort claims are made. If legal provisions require longer periods to be valid, then they shall be binding.

Section 7: Total Liability

(1) Any liability concerning claims for damage which goes beyond that which is designated in section 6 - disregarding the legal nature of the claim which is made - is excluded.

(2) The regulation found in (1) is not valid for claims according to sections 1 and 4 of the *Produkthaftungsgesetz* [Product Liability Act] as well as for cases of inability or impossibility.

(3) The limits to which our liability is excluded or limited are also valid for the personal liability of our employees, workers, staff, representatives, and partners.

Section 8: Reservation of Title

(1) We retain the title to all goods which we supply until all claims arising from the business conditions with the customer have been paid. If the customer is in breach of contract, particularly if he/she is in default of payment, we have the right to reclaim goods which we have supplied. If we reclaim the goods, this does not indicate termination of the contract unless we have already explicitly declared this in written form.

(2) The customer has the right, in the normal course of business, to work on or to transfer to a third party goods which we have supplied but to which we retain the title. However, the customer may neither assign such goods by way of security nor mortgage such goods as long as we retain the title to them.

(3) If the customer further processes or transforms goods which we have supplied, then this shall take place with us as the manufacturer according to section 950 of the *Bürgerliches Gesetzbuch* [German Civil Code]; however, we shall not be obliged to pay remuneration. We nonetheless retain the title to those items which result from such processing or transformation and we reserve the right to such items as according to these terms and conditions. Transfer of ownership of such reserved goods to a third party is excluded from business relations until our demands have been satisfied. If the reserved goods are combined or mixed according to sections 947 and 948 of the *Bürgerliches Gesetzbuch* [German Civil Code], we shall receive partial ownership of the new item as according to the relationship between the invoice value of the goods we supplied and the invoice value of the new item. If goods are resold, then the customer shall transfer to us, herewith and as of now and until all of our claims have been fulfilled, the claims which result for him/her from resale and all other claims against his/her customer including all ancillary rights. Upon our request, the customer is required to share all information with us and to display all documents which are necessary for us to claim our rights as regards the customers of our customer.

(4) If the customer sends the reserved goods to a third party in order to complete a contract for work and services or a contract for work and materials, then the claims from the contractual relationship concerned including all ancillary rights shall also be transferred to us in advance as a precaution. If such transferred claims as regards the third party are included in a current account, then the stipulated transfer shall also include all claims resulting from the current account relationship.

(5) Within the framework of the ordinary course of business, the customer shall be authorized by us to be involved in claims which have been transferred to us through resale. The customer is required on a basis of trust to keep any payments made due to resale in safe custody and then to transfer these to us. The right to receive revenue arising from resale from the responsible banking institution shall be assigned to us in advance as a precaution.

(6) Upon the request of the customer, we bind ourselves to release securities of our choice such that their value does not exceed 20% of the claims which are to be secured.

(7) If the customer breaches his/her contractual obligations, particularly in the case of default in payment, we reserve the right, after making demands for payment and allowing reasonable grace periods, to reclaim the delivered products as security for the outstanding claims. In such a situation, the customer is required to return the goods and shall in this case explicitly allow us to reclaim the goods and to enter his/her place of business.

(8) In addition, the customer is required to notify us immediately of each and every upcoming or past detriment of rights arising from continued and extended reservation of title, blanket assignment, or judicial execution of third parties and to indicate our rights based on the stipulated reservation of title to the relevant third parties. The customer is required to notify us in written form immediately so that we can take legal action as according to section 771 of the *Zivilprozessordnung* [German Code of Civil Procedure]. If the third party is not able to make restitutions for judicial and extra-judicial costs of a law suit according to section 771 of the *Zivilprozessordnung*, then the customer is liable for losses which we suffer.

Section 9: Place of Performance - Place of Jurisdiction

(1) For all rights and obligations which arise from business relations with us, Quakenbrück shall be the effective place of performance for deliveries and payments as long as the customer is a merchant who has been entered in the commercial register as a merchant or is a person under public law.

(2) The place of jurisdiction is Quakenbrück.

Section 10: Other Information

(1) German Law is exclusively applicable.

(2) If one term or condition of these General Terms and Conditions of Sale and Delivery - regardless of any legal grounds - should become void, then the validity of the remaining terms and conditions shall remain unaffected by this. The contracting parties are required to replace ineffective terms and conditions with terms and conditions which come closest to serving the purpose of the ineffective terms and conditions. If any doubt arises, then the present Terms and Conditions of Sale and Delivery are each to be interpreted in such a way that they are not in conflict with the *Gesetz zur Regelung des Rechts der allgemeinen Geschäftsbedingungen* [law governing general terms and conditions of business].

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