

GENERAL TERMS OF SALE AND DELIVERY

I. CONCLUSION OF CONTRACT

All agreements of the SCHOELLER-BLECKMANN Edelstahlrohr GmbH (hereinafter referred to as SBER) with the PURCHASERS of its goods and the receivers of its services are exclusively subject to these terms, unless otherwise agreed in writing.

Oral declarations, information and recommendations of SBER are binding only, when they were confirmed by SBER in writing.

Contradictory terms and conditions or provisions of purchasers are binding only, when SBER acknowledged these in writing, and are applicable for that deal only, for which they were agreed. A separate opposition of SBER against such regulations is not required for the exclusive validity of these terms.

The offers of SBER are without obligation and only become binding for SBER with the written confirmation of order.

II. PROPRIETARY RIGHTS, DRAWINGS, SAMPLES

In case domestic or foreign proprietary rights of third parties, especially rights with regard to patents, trademarks or samples are violated with the utilization of drawings, samples or other remedies provided by the customer or with the execution of provisions about quality or further characteristics or of similar provisions of the customer, the customer has to indemnify SBER for all expenses resulting from that and indemnify SBER against legal action.

For loss or damage of provided drawings, samples and the like, the liability of SBER for accident and slight negligence is excluded. The existence of gross negligence is to be verified by the customer. Insurances for that are taken out by SBER only with the expressed order and at the expense of the customer.

III. PRICES AND TERMS OF PAYMENT

1. All prices are understood excluding domestic value added tax. For domestic deliveries and services, the value added tax (turnover tax) is separately charged at the respectively valid rate.

2. The agreed place of payment is Ternitz. Payment is executed net cash, free of charges. Set-off or retention in connection with asserted counterclaims is excluded.

3. SBER reserves the acceptance of discountable and regularly charged bills; it takes place, however, on account of payment only in any case.

Credit notes over received bills of exchange and checks are always valid subject to the correct entry of the value. The discount interests and charges resulting from that, are at the expense of the purchaser. SBER accepts no liability for the timely presentation, protesting, notification and re-transfer of the bill if not cashed.

4. Incoming payments are notwithstanding contradictory payment dedications charged up against the respectively oldest outstanding claim; first of all to the costs and other supplementary fees, then to interests and finally to the capital.

5. In case of default in payment, the purchaser is charged default interest and further charges arising notwithstanding the further legal consequences. As default interest, 3,5 % over the respective 3-month-EURIBOR valid at the point of time of the default in payment is considered agreed.

6. The purchaser undertakes to reimburse the fines and collection charges arising for SBER in case of default with his/her contractual payment obligations.

7. In case the terms of payment are not fulfilled or SBER learns about circumstances, which in their opinion are suitable to reduce the credit standing of the purchaser, all claims of SBER, also such from other contracts, become immediately due, independent of the term of possibly taken in and credited bills.

SBER is then also entitled to execute still outstanding deliveries against advance payment only.

IV. RESERVATION OF PROPRIETARY RIGHTS

1. Until the complete payment of purchase price, interest and supplementary fees, the goods remain property of SBER. The purchaser has to notify SBER immediately about a seizure or another laying claim on the goods by third parties and has to take all legally required measures against the violation of the proprietary rights of SBER at his/her own expense.

2. Reselling the reserved goods is admissible with the expressed approval of SBER and against cash payment or a passage of the proprietary rights to the acquiring party only.

3. Any claims and rights from reselling, processing, confusion or other utilization of the reserved goods as well as possible claims arising from a damage to or a utilization of the reserved goods are assigned by the purchaser to SBER in advance already and he/she also has to document this in the legally required manner. The purchaser immediately pays over collected amounts to SBER or keeps them safe until then separately and on behalf of SBER.

4. As far as this is possible according to the respectively applicable law, it is agreed, that the reservation of proprietary rights is maintained independently of possible processing or selling, as long as not all claims, also from other business deals of SBER, against this customer are fulfilled.

V. INCOTERMS

For the business transactions of SBER, the Incoterms in the respectively last valid version, which is stated in the confirmation of order, are applicable.

VI. QUANTITY VARIANCES

Quantity variances are agreed on order and put down in writing in the confirmation of order.

Decisive for the invoiced amounts are the amounts determined with the calibrated measuring means of SBER.

VII. TERMS OF DELIVERY

1. Basically, the conditions of the agreed Incoterms stated in the confirmation of order are valid.

2. Partial deliveries are admissible.

3. Delivery deadlines and dates are approximate values, which – clarity of the order provided – start to run with the date of the confirmation of order of SBER.

4. The delivery obligation is also considered fulfilled, when readiness for shipment or acceptance was notified, but the goods are not accepted or cannot be picked up or shipped in time without the fault of SBER.

5. In case of an acceptance default, SBER reserves a withdrawal from the contract. As far as this was culpably caused by the purchaser or the persons employed by him/her to fulfill the obligations, he/she indemnifies SBER for all subsequent damages and indemnifies SBER against legal action.

VIII. FORCE MAJEURE AND FURTHER DELIVERY HINDRANCES

1. Events of force majeure and other circumstances beyond the sphere of influence of SBER, like e.g. operational interferences, traffic interferences as well as difficulties in the supply of the factories with power, raw materials, fuels and auxiliary materials and further hindrances in production and delivery exclude claims for damages of the purchaser and entitle SBER either to extend the delivery deadline or to completely or partially withdraw from the contract.

2. Force majeure further includes strike, lockout and further circumstances (bans on import and export, embargos imposed after conclusion of the contract), which essentially complicate the delivery or even make it impossible, whereby it is of no importance, whether they occur at SBER or one of its sub-suppliers.

3. SBER undertakes to immediately inform the purchaser about the occurrence and the termination of such delivery hindrances.

4. In case of a justified withdrawal of the purchaser due to force majeure or similar delivery hindrances, the costs and charges accrued at SBER are borne by both contract parties by one half each according to equity.

5. If the circumstances, under which the contract was concluded, changed that considerably, that rightly it may be assumed, that the conclusion would not have taken place at all under the changed circumstances or at least at other terms, SBER is entitled to withdraw from the contract or to demand a change of the contractual provisions, like e.g. payment in other currency, change of the delivery modalities, etc., which would take the changed circumstances into account.

6. The change of the circumstances can also be justified with substantial changes of the personal or the proprietor conditions of the purchaser.

IX. SHIPMENT AND PASSAGE OF RISK

1. The goods are considered shipped in orderly condition. Damages are considered to have occurred during transportation until the opposite is verified. As far as according to the Incoterms the damage has occurred in the area of risk taking of SBER, the purchaser has to preserve the rights of SBER against the carrier or transport insurer (or other persons affected) with the otherwise loss of possible claims against SBER.

2. For possible losses, damages or confusions, the purchaser is obliged to immediately effect the official confirmation required for the assertion of claims for compensation on receipt of the goods and to pass it on to SBER.

X. ACCEPTANCE

If the purchaser gets into acceptance default or if in case of blanket orders the order is not effected within 14 calendar days after the agreed order date, SBER is entitled to ship the goods at the risks and costs of the purchaser at the choice of SBER or to store them in an optional manner. The right to withdraw from the contract according to point VII 5) remains untouched by this.

At this point of time, the goods are considered delivered as per agreement in every respect and the risk passes to the purchaser, in case it has not already passed before. The purchaser immediately has to effect the payments, which are due for the case of delivery or which are caused by the delivery.

XI. OBLIGATION FOR EXAMINATION AND TO GIVE NOTICE OF DEFECTS

1. The purchaser has to examine deliveries of SBER immediately after receipt and immediately has to notify SBER about possible complaints, especially deviations from the order. This applies to material defects, short deliveries and differing deliveries.
2. Hidden defects as well as other deviations from the order, which are not immediately recognizable, have to be asserted judicially within 3 months in any case.
3. On violation of the obligation for examination and to give notice of defects or on assertion later than 3 months after delivery, all legal dispositive rights and claims for damages of the purchaser from a possible deviation of the delivery from the order are excluded.

XII. WARRANTY

1. Until verification of the opposite, on handover the goods are considered delivered as per contract. The warranty obligation is 3 months in any case from delivery of the goods or handover of the service on.
2. In case of defects, which are perfectly verified and exclude the applicability of the goods, SBER accepts the warranty in such manner, that it takes back the goods at its choice at the calculated price, eliminates the defect or free of charge replaces the goods by new ones, which correspond the order. The complained goods are to be sent back on demand or after request for the approval of SCHOELLER-BLECKMANN.
3. Warranty claims going beyond this, from whichever title, are expressly excluded, as far as this is legally admissible.

XIII. LIABILITY

1. All claims for damages, especially also such for consequential damages of defects against SBER or the persons employed in the performance of its obligations, are excluded, as far as this is legally admissible and they are not based on intent or gross negligence of SBER.
2. The purchaser has to furnish the proof of the presence of gross negligence.
3. The purchaser relinquishes possible claims of recourses, which could arise him against SBER due to own liability. The customer undertakes to pass the relinquishments on damages and recourse as well as the obligation for passage in case of reselling of the goods to his/her customers. In case of violation of this obligation, the purchaser indemnifies SBER for all claims of third parties caused by that and indemnifies SBER against legal actions.
4. Claims for damages and recourses have to be legally asserted against SBER within 3 months, with otherwise forfeiture.
5. In case of paid labor, SBER is liable for justifiable execution defects up to the amount of the invoiced costs of labor.

XIV. FURTHER DISCLAIMERS OF THE PURCHASER

1. The purchaser relinquishes the possibility, to rescind a contract with SBER due to mistake.
2. The purchaser relinquishes to plead the statutes of limitations against claims of SBER.

XV. GENERAL

1. Should individual provisions of these terms of sale be or become completely or partially ineffective, invalid or unenforceable, this does not affect the effectiveness, validity or enforceability of the further provisions. For this case, a provision similar to the agreed provision in the economic result is applicable between the contract parties.
2. Austrian law is applicable to the legal relations of the contract parties excluding the UN sales law.
3. In case of lawsuits, both parties submit to the relevant competent court at the site of SBER.