

General Terms and Conditions of Sale and Delivery

Hermann Stahlschmidt Stahlges. m.b.H.

These Terms and Conditions of Sale and Delivery shall apply to all goods and services offered, delivered and provided by the company Hermann Stahlschmidt Stahlges. m.b.H.

General Terms

1. All contracts between the buyer and us are governed by the laws of the Federal Republic of Germany. The Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
2. Our Terms and Conditions of Sale and Delivery shall also apply if we process the ordered goods for the buyer.
3. The buyer's terms of procurement shall not apply.
4. Our offers are subject to change and are non-binding, unless they are expressly specified as being binding.
5. We apply Incoterms to contracts only to determine the point of delivery (transfer of risk), costs and other duties of care while the goods are transported from us to the buyer.
6. The place of fulfillment for both parties is Willich, Germany.

Retention of Title

1. The goods we deliver (Reserved Goods) shall remain our property until the purchase price has been completely paid.
2. Section 950 of the German Civil Code shall apply to any processing or transformation of the Reserved Goods. We are deemed manufacturer, without giving rise to any obligation on our part. The processed or reworked goods shall be considered Reserved Goods as described in Number 1.
3. If the buyer intermixes the Reserved Goods with other goods, we are entitled to co-ownership in the new item equal to the ratio of the invoice amount of the Reserved Goods to the invoice amount of the other goods used.
The buyer hereby assigns us the ownership rights or expectancy rights in the new inventory or the new item in the ratio of the invoice amount of the Reserved Goods to the invoice amount of the other goods used, and shall safeguard them for us without charge. We hereby accept this. Our rights in co-ownership shall be considered Reserved Goods as described in Number 1.
4. The buyer may resell Reserved Goods in the normal course of business, provided the buyer is not in default of payment. As security the buyer shall assign to us in advance its claim against the buyer of the resold goods. The amount of this assignment shall be equivalent to our share in ownership rights or co-ownership rights in the Reserved Goods. The buyer is entitled to collect any claims from resale that it assigned to us.

Delivery

We may withdraw from the contract if deliveries to us are incorrect or delayed through no fault of our own, provided we have not assumed procurement risk or a delivery guarantee.

Liability for Defects

1. Section 377 of the German Commercial Code shall apply. The buyer shall carefully inspect the goods after receipt for defects and shall inform us without undue delay in text form of any defects. If the buyer intends to integrate the goods in another item or attach them to another item, the buyer shall in particular carefully inspect the goods regarding the internal properties relevant for their intended use before installing them. If the buyer does not detect a defect until handling or processing our goods, work shall be suspended immediately. Any defect shall be notified to us without undue delay and in text form.
2. If notification of a defect is justified and is made in due time, we may at our discretion either remedy the defect or deliver goods that are free of defects (subsequent performance). If subsequent performance is unsuccessful, the buyer is entitled to reduce the purchase price or withdraw from the contract, at the buyer's discretion. If the defect is not material, the buyer may only reduce the purchase price.
This shall not affect the buyer's right to assert claims for damages, provided such claims are not prohibited or limited by the section below, "General Limitation of Liability".
3. We shall assume any expenses the buyer incurs in connection with subsequent performance only if such costs are not out of proportion to the agreed purchase price for the defect goods. This shall be the case, at the latest, when costs exceed 150% of the purchase price.

General Limitation of Liability

We do not assume liability for claims for damages – also not for claims based on tort – arising from simple negligent breach of a non-material contractual obligation and if such breach causes property damage or financial loss only. A contractual obligation is considered material if the fulfillment of such is a prerequisite to proper execution of the contract and if the buyer may regularly rely on such fulfillment.

In case of negligent breach of a material contractual obligation our liability is limited to the foreseeable damages typical to this type of contract, provided that the breach caused property damage or financial loss only.

Limitation Period

Warranty claims asserted by the buyer for defects lapse one year after the goods have been handed over to the buyer. This shall not apply if the buyer has used the goods in accordance with the customary method of use in a stationary structure and the goods caused the stationary structure to be defective. This shall also not apply for damage claims for a defect leading to death or injury to body or health or other damage if the defect was intentionally caused or with gross negligence or was caused by the breach of a material contractual obligation (for this definition see “Liability for Defects”).

Jurisdiction

The courts of Krefeld, Germany shall have jurisdiction for both parties in all disputes arising from the contract. These courts shall have exclusive jurisdiction for claims asserted against us. We are also entitled to file claims in courts having general jurisdiction for the buyer.