

General Terms and Conditions of Trade (GTC) of Paul Schäfer Stahl- und Metallbau GmbH

I. General

1. Our supplies and services are exclusively performed on basis of the terms and conditions below; the purchaser's terms and conditions are herewith rejected.
2. Our quotations are non-binding as to quantities and price. Any information given is non-binding at all times. Orders shall not become binding for us before and unless we have issued a written order confirmation or the relevant order has been completed by us without any confirmation.
3. Technical and design deviations from descriptions, data given in brochures, catalogues and written documentation, as well as model, design and material changes in course of technical progress are reserved without any claims being assertable against us in this respect. This shall not apply to specifications submitted by the customer.

II. Prices, terms and conditions of payment, default

1. Our prices are net prices and are quoted for delivery ex works or at the place of dispatch indicated by us unless otherwise agreed upon (excluding packaging and dispatch), plus statutory value added tax as applicable on the date of delivery.
2. Should certain cost factors, e.g. in particular wage cost, primary material or freight, increase significantly, i.e. by over 5 % between the date of the contract and the date of delivery, we shall be entitled to adjust the agreed price appropriately in compliance with the relevant cost factors. Should the price increase claimed by us amount to over 5 % of the price of the partial or total consignment concerned, the customer shall be entitled to withdraw from the contract within two weeks upon receipt of our notice of the change in price. This right of withdrawal is restricted to those parts of the total consignment to which we have applied the price increase.
3. Payment shall be made in a manner so that we may dispose of the relevant amount on the due date. In case of non-compliance with the terms and conditions of payment or circumstances coming to our knowledge upon signature of the contract and compromising the customer's creditworthiness according to banking aspects, e.g. an application to open insolvency proceedings over the customer's assets or the initiation of an out-of-court procedure for the settlement of debts, a suspension of payments or other circumstances significantly affecting the customer's creditworthiness and endangering the claim for our due compensation, all claims shall become due immediately upon request. In such case, we shall be entitled to perform outstanding supplies and services against advance payment or provision of security only, or to withdraw from the contract upon expiry of a reasonable term and/or to claim damages. Evidence of conditions relevant for creditworthiness shall be deemed provided by information from a renowned credit agency or bank.
4. Customers are in default 30 days after the payment due date and receipt of return services. In case of late payment, interest amounting to 8 % above the relevant German Central Bank prime rate and 5 % above the German Central Bank prime rate for consumers, respectively, shall be charged, unless higher interest may be charged on other legal grounds. This does not exclude the assertion of additional damage caused by delay.

III. Dispatch, transfer of risk, transport damage

1. Transport routes and means as well as the appointment of a carrier or freight forwarder shall be in our responsibility unless otherwise agreed upon.
2. Should loading or the transport of goods be delayed for reasons in the purchaser's responsibility, we shall be entitled to store the goods at our own reasonable discretion at the purchaser's expense and risk as well as to take any steps deemed appropriate to preserve the goods, and to invoice the goods as if delivered. The same applies if goods notified as being ready for dispatch are not called within 4 days. Statutory regulations regarding a default in acceptance remain unaffected.
3. In case of transport damage, the purchaser shall immediately arrange for a factual report with the competent agencies.
4. Risk shall be transferred to the purchaser upon handover of goods to the carrier or freight forwarder, however upon dispatch ex works or store at the latest.
5. We are entitled to perform partial deliveries.

IV. Terms of delivery, delay in delivery

1. The agreed terms of delivery shall only apply on condition that all details of the order have been clarified and all obligations of the purchaser have been fulfilled in due time.
2. Should the purchaser fail to meet contractual obligations in due time – including, but not limited to obligations to cooperate or secondary obligations such as the issue of a letter of credit, the provision of inland or foreign certificates, the settlement of an advance payment, etc. – we shall be entitled to postpone our delivery dates in accordance with the requirements of our production process without prejudice to our rights regarding the purchaser's default.
3. As regards compliance with delivery terms, the date of dispatch ex work is decisive. If goods cannot be dispatched in due time for reasons beyond our control, delivery terms shall be deemed complied with upon notification of the readiness for dispatch.
4. Should we be prevented from performing our obligations due to the occurrence of unforeseen events which could not be anticipated despite reasonable diligence, e.g. war, interference of higher authority, strikes, riots, civil commotions, natural disasters, accidents, other business disruptions and delays in the supply of major items or primary materials, the delivery term shall be extended by the duration of the impediment plus a reasonable resumption period. Should delivery become impossible or unreasonable due to the impediment, we may withdraw from the contract; the same right may be asserted by the purchaser if acceptance of the goods is not appropriate due to a delay. Impediments beyond our reasonable control in terms of this paragraph in any case are strikes or lock-outs. Without prejudice to our rights regarding the purchaser's default, the term of delivery shall be extended by the period during which the purchaser is in default. Should we be in default, the purchaser may withdraw from the contract upon expiry of a reasonable term set down in writing. The same shall apply if delivery of goods should be impossible for us due to reasons in our responsibility. We undertake to immediately inform the purchaser on the occurrence of an unforeseen event in terms of paragraph 1 above.
5. The right of withdrawal as conceded to the purchaser or ourselves pursuant to Section IV.5 above shall in generally only extend to any yet unperformed parts of the contract. Should, however, partially completed supplies or services be useless to the purchaser, the purchaser shall be entitled to withdraw from the entire contract.
6. Additional rights, in particular damages, may only be claimed by the purchaser if we acted with willful intent or gross negligence.

V. Acceptance / Commissioning

1. To the extent that we are assigned with the assembly or installation of delivered goods at the purchaser's or any third party's premises, a formal acceptance procedure is required before the purchaser or such third party starts using such goods. Should use of the goods be started without our previous consent or without any previous acceptance procedure, the relevant supplies/services shall be deemed accepted. The date for acceptance testing shall be fixed as soon as possible after assembly or installation of the parts or systems supplied by us, 14 days prior to the start of use at the latest, however.
2. We are entitled to request acceptance of our performance from the purchaser at any time in compliance with the 14-day term. This shall also apply for the case that the purchaser or third parties have not yet completed their performance on the same project. Should the purchaser reject to attend at the date of acceptance as requested by us, or should the purchaser refuse to issue an acceptance test record, acceptance shall be deemed completed.
3. Parts of performance which may be handled separately shall also be acceptance-tested separately upon request.

VI. Defects, guarantee

1. Any consignment shall be inspected immediately and treated carefully upon arrival at its place of destination. Should such inspection be omitted, any liability on our part shall be excluded.
2. Claims of defects with regard to type, quality and quantity shall be asserted immediately in writing, within 10 calendar days at the latest, however.
3. Any claims for damages due to slight or mean negligence shall be excluded. In addition, any liability claims shall be excluded if – due to further dispatch and/or processing of the work performance rendered by us or due to unobjected use of the work performance or other circumstances – we are no longer capable of verifying whether the work performance is indeed defective.
4. Other claims are – to the legally permissible extent – excluded; this shall particularly apply to contractual and non-contractual claims for the compensation of damage not occurred on the work performance itself. As regards rework we may request that the relevant work performance is dispatched, carriage prepaid, to the manufacturer's workshop or held ready for the purpose of rework at our option.
5. Initial rust does not present any defect unless otherwise agreed; this shall likewise be applicable to color shade deviations of steel and aluminum surfaces due to paint, powder or anodic coating.
6. The purchaser shall immediately give us the opportunity to convince ourselves of the claimed defect, in particular the purchaser shall make available the work performance objected to or samples of it upon request.
7. Upon completion of an agreed acceptance procedure, the claim of defects which could have been detected in course of the acceptance procedure is excluded.
8. The guarantee period is 4 years for building construction and 2 years for the manufacture, maintenance or modification of objects. As regards wear parts and movable parts such as handles, fittings, rollers, electrical drive systems, etc., we issue a guarantee for 2 years. The guarantee periods may be extended if a maintenance agreement is concluded.

VII. Liability

1. Unless stipulated otherwise in the present GTC, we shall only be liable for damages for violation of contractual or non-contractual obligations in case of willful intent or gross negligence.
2. In case of willful intent and/or gross negligence on the part of junior assistant workers, however, we shall only be liable if they violate major contractual obligations.
3. This provision shall not affect claims for personal injury or damage to privately used objects in compliance with the Product Liability Act.
4. Any liability for damages shall be limited to damage which we anticipated or would have had to anticipate as a potential consequence of contract violations upon conclusion of the contract in consideration of conditions which were known to us or must have been known to us.
5. The above limits of liability and exclusions shall also be applicable to the benefit of our employees and other assistants, for whatever legal grounds they may be liable.

VIII. Reservation of title

1. The work performance completed shall remain our property until completion of settlement of our compensation claim including incidental claims, if any, as well as any other claims asserted by us against the customer.
2. Should our work performance be processed or combined with third-party work performance by the purchaser, we are entitled to co-ownership of the new object at the ratio of the accounting value of the rendered work performance to the accounting value of the third-party work performance. Should our ownership cease by combination, mixture or processing, the purchaser shall transfer the purchaser's title and/or expectant right to the new inventory or object to the extent of the accounting value of the completed work performance already now – in case of processing at the ratio of the accounting value of the rendered work performance to the accounting value of the used work performance – and shall keep it for us free of charge.
3. The purchaser may only resell the rendered work performance within ordinary business transactions at the purchaser's normal business conditions and unless the purchaser is in default, provided that the purchaser agrees on retention of title with the relevant buyer and the claims resulting from the resale are vested in us pursuant to Sections VIII.4 and VIII.5. The purchaser shall not be entitled to other resale of the rendered work performance. Resale shall also include using the rendered work performance for the fulfillment of other contracts for works and services.
4. The purchaser's claims resulting from the resale of the rendered work performance shall be assigned to us already now. They shall serve as security to the same extent as the rendered work performance in terms of Section VIII.1.
5. Should the rendered work performance be resold by the purchaser together with third-party work performance, the claim resulting from the resale shall be assigned to us at the ratio of the accounting value of the rendered work performance to the third-party work performance. In case of a resale of any work performance to which we have co-ownership title pursuant to Section VIII.2, a partial claim corresponding to our co-ownership portion shall be assigned to us.
6. Should the value of given securities exceed the secured total claims by over 20 %, we shall be obliged to release securities at our option upon the purchaser's request to this extent.

IX. Applicable law

1. These GTC shall exclusively be governed by German law.

X. Place of performance, place of jurisdiction

1. Place of performance and jurisdiction for both parties to the contract shall be the district court of Bad Neuenahr-Ahrweiler to the extent the parties are business people (businessmen in terms of the German commercial code). We shall also be entitled to file an action against the purchaser at the purchaser's general place of jurisdiction. The agreement on jurisdiction shall also be applicable if the customer has no general place of jurisdiction in Germany, relocates the customer's residence or habitual residence to outside of the geographical limits of the German code of civil procedure, or if the purchaser's residence or habitual residence is not known at the time of the institution of proceedings.

XI. Export certificate

1. Should a purchaser resident outside the Federal Republic of Germany (extraterritorial purchaser) or an agent of the purchaser collect the work performance and transport and/or dispatch it to a place outside Germany, the purchaser shall provide us with an export certificate as required by the competent tax authorities. Should this certificate not be submitted, the purchaser shall pay the invoice amount and value added tax at the rate applicable for deliveries within the Federal Republic of Germany.

XII. Miscellaneous

1. Modifications of and amendments to these General Terms and Conditions of Trade shall be made in writing to become effective.
2. Should an individual provision of these GTC and the subsequently agreed contract be or become invalid, this shall not affect the validity of the remaining contract.

As of July 2010