

1. Application of our General Terms and Conditions

Our General Terms and Conditions only apply to companies as defined in Paragraph 310 Section 1 of the Bürgerliches Gesetzbuch (BGB – German Civil Code). All quotes not expressly described as binding are submitted on a non-binding basis. All agreements – also those for future deliveries and services – will be based exclusively on the following conditions; any other conditions by the Purchaser will only apply to the extent that we have expressly agreed to them in writing.

2. Placing orders

2.1 DIN EN ISO 1461 in the version valid at the time of conclusion of the contract without requirements for post-treatment (DIN abbreviation: t Zn 0) will apply to the scope of the hot-dip galvanising performances provided. In deviation from DIN EN ISO 1461, components must be supplied free of oil, grease, zinc and paint. DAST Directive 022 “Feuerverzinken von tragenden Stahlbauteilen” (“Hot-dip galvanising of structural steel components”) in the version valid at conclusion of the contract will apply to the galvanisation of structural steel components. Additional performances not covered by the above standards must be agreed and remunerated separately. Separate express written agreements will be required if other technical rules and standards are to be included in the contract.

DIN EN ISO 12944-5 will be regarded as constituent to the contract where performances for “colour-coating / wet-coating of hot-dip galvanised surfaces” are concerned. The “GSB International’s international quality guidelines for coating steel components” will be applicable where the “powder-coating of hot-dip galvanised surfaces” is concerned. DIN EN ISO 22063 will be applicable where spray galvanising is concerned and DIN EN ISO 10684 where the hot-dip galvanising of connecting elements is concerned.

2.2 The Purchaser will be liable for the correctness and completeness of the documents and information it is required to submit and provide. The Purchaser must in particular present the order specification on time in accordance with Clause 4.2.2 of DAST Directive 022.

2.3 Unless they are expressly described as binding in the order confirmation, the information and descriptions of the work contained in materials belonging to our quotation represent approximations that are customary in the industry. We will verify compliance of the materials and semi-finished products provided by the Purchaser with contractual specifications or drawings and samples only on the basis of express agreements.

2.4 The Allgemeine Deutsche Spediteur-Bedingungen (ADSp – German Freight Forwarders’ Standard Terms and Conditions) in the version valid at conclusion of the contract will apply to the extent that we are responsible for shipping the goods in accordance with the order.

3. Delivery

3.1 Unless a specific delivery date has been confirmed in writing, stated delivery times will only be approximate. Times for deliveries to the Purchaser will commence with the day we receive deliveries from the Purchaser but not before all details of execution have been clarified and all other conditions for the proper processing of the contract to be established by the Purchaser have been fulfilled. They will be deemed to have been met if the goods leave our factory at the agreed time or when the Purchaser has been notified of shipping readiness should dispatch not be possible. They will also be deemed to have been met if the delivery is delayed for reasons for which the Purchaser is responsible.

3.2 Subsequent amendments to the contract by the Purchaser that affect the delivery time will extend the delivery time by a reasonable extent.

3.3 The delivery time limit will be extended appropriately in the event of unforeseeable exceptional events which could not have been prevented despite the reasonable care we took in view of the circumstances of the individual case. These in particular include intervention by the authorities, disruptions to operations, labour disputes and delays in the delivery of raw materials and supplies. We shall be released from the delivery obligation without the buyer being able to claim damages if the aforementioned events make the delivery or performance impossible. The Purchaser will in this event not be obliged to make a counter-performance for the duration of the delay in deliveries. The Purchaser will be entitled to withdraw from the contract if the delay in delivery lasts longer than 2 weeks. The above legal consequences for the Purchaser’s acceptance obligation will apply accordingly in the event that the aforementioned hindrances occur for the Purchaser. The contract parties will be obliged to immediately notify the other party of the beginning and end of hindrances of the aforementioned type.

3.4 In the event of deliveries that are delayed for reasons other than those set out in Clause 3.2 or Clause 3.3, the Purchaser must set us a reasonable subsequent time limit of at least two weeks.

3.5 If delivery is delayed for reasons for which we are responsible, the Purchaser may, if it is able to credibly demonstrate that it has suffered damages, demand compensation for each full week of the delay amounting to 0.5% but no more than 5% in total of the price for that part of the deliveries or performances which we have delayed.

3.6 The Purchaser will be obliged to declare at our request and within a reasonable period of time whether, as a result of the delay of delivery or performance, it intends to withdraw from the contract or insist on the delivery or performance.

3.7 Partial deliveries of the total order quantity will be permissible to the extent that they may be considered reasonable for the Purchaser.

3.8 If the Purchaser delays the acceptance of our delivery or culpably violates other cooperation obligations, we may demand compensation for the damages we suffer as a result, including any additional expenses, from the Purchaser.

4. Pricing

4.1 The prices for hot-dip galvanising are – unless otherwise expressly agreed – ex works, galvanised and weighed. The galvanised weight we determine will be charged. The prices for duplex coatings will be based on surface areas, weights or units. We will determine the surface area either on the basis of a projection or the components’ dimensions. The prices do not include packaging, freight, postage or insurance. All prices are quoted without the respectively applicable VAT. We will charge a minimum invoice value.

If it turns out after the order was placed that additional work, particularly the removal of old galvanisation and other residues from the material to be galvanised, the creation of holes on tubular structures or hollow bodies or hollow dipping, is required, we will coordinate the type of execution of the work and remuneration of the corresponding costs with the Purchaser.

4.2 If, in the event of delivery times of more than four months after the order was placed / confirmed, substantial changes occur in regard to specific cost factors, e.g. in particular for wages, materials, energy or freight, we may adjust the agreed price to an appropriate extent in accordance with the effects of the above-mentioned cost factors. We shall prove the effect of these cost factors to the Customer at its request. This will not apply if we have expressly agreed a fixed price in writing.

5. Terms of payment:

5.1 All invoices will be payable immediately upon collection / delivery without deduction.

5.2 If the Purchaser falls behind with payments, we will be entitled to demand interest on arrears as compensation within the scope permitted by statutory provisions from the corresponding point in time.

5.3 Cheques will only be accepted by agreement and on condition that they are discountable. Discount charges will be charged from the date the invoiced amount becomes due. Payments from other countries must be made exempt of charges for us.

5.4 If, subsequent to the conclusion of the contract, we become aware of facts about significant deteriorations in the Purchaser’s financial circumstances that in a prudent business person’s opinion would put our claim to the counter performance at risk, we may demand within a reasonable time limit that a suitable security be provided up to the time of our performance or demand payment in advance or cash payment on collection. We may withdraw from the contract and/or demand compensation in lieu of performance if the Purchaser does not satisfy our justified request or does not do so in time.

5.5 If the Purchaser falls behind with a due part of the performance, we may make the entire outstanding amount due immediately and withdraw from the contract and/or demand compensation in lieu of performance after a suitable time limit has elapsed without success.

5.6 The Purchaser may only offset counter claims that have been recognised by us or that have been determined in a legally effective manner. The Purchaser will also only be entitled to exercise its right of retention to the extent that its counter claim is based on the same contractual relationship.

6. Security for claims arising out of the processing contract

6.1 The Purchaser grants us a lien on the items provided to us for processing. The lien may also be asserted for claims arising from work and other services performed and provided previously insofar as they are associated with the item. The lien will only apply to other claims arising out of the business relationship to the extent that these are undisputed or legally effective.

6.2 If the galvanised parts are supplied to the Purchaser before full payment has been made, it is hereby agreed with the Purchaser that it will transfer ownership in these parts to us as security for our claims and that it will hold these parts on our behalf without charge.

6.3 Clause 6.2 will apply accordingly in regard to the Purchaser’s entitlement to ownership of the items provided to us that have been supplied to the Purchaser with reservation of title. We will be entitled to acquire ownership through payment to remove any conditions. The Purchaser is assigning its claim to the re-transfer of ownership if the items have been transferred as security to a third party. The same will apply to any of the Purchaser’s claims against the owners of secured and reserved property that result from over-collateralisation.

6.4 The Purchaser is already assigning to us all claims against its customers to which it is entitled from the sale of the collateral security with or without later processing. The Purchaser will remain authorised to collect the claims assigned to us until we revoke this authorisation or the Purchaser fails to properly meet its payment obligations towards us. The Purchaser must, at our request, inform the debtors of the assignment and notify us of the assigned claims and corresponding debtors and provide all the relevant documents.

6.5 In the event that the collateral security is combined with other goods that do not belong to us, we will be entitled to co-ownership of the resulting new item to the proportion of the value at the time the collateral security is combined with the other processed goods.

6.6 The Purchaser will not be entitled to dispose of the collateral or the claims assigned to us in other ways, in particular through agreements with customers. The Purchaser must immediately inform us of any impairments to its rights.

6.7 We undertake at the Purchaser’s request to release the collateral to which we are entitled under the above provisions to the extent that the value of the collateral security exceeds that of the secured claims by more than 20%.

7. Shipping and transfer of risk

7.1 Insofar as it is to be organised by us at the Purchaser’s request and expense, shipping will be effected ex works; insofar as no specific agreement has been made, without obligation to choose the cheapest shipping method.

7.2 The transport risk will – even in the event of freight-free delivery – transfer to the Purchaser when the goods are handed over to the forwarding agent or have been loaded on to one of our vehicles. If the goods are ready for shipment and the shipment or acceptance is delayed for reasons for which we are not responsible, the risk will be transferred to the Purchaser upon its receipt of notification of readiness for shipment. If the Purchaser is responsible for the delay in shipment, we will be entitled to store the goods at the Purchaser’s expense and risk. We will be entitled, but not obliged, to insure deliveries in the name of and for the account of the Purchaser. Even in the event of agreed collection dates, we will not be liable for reasonable waiting times experienced by the Purchaser or its representative.

8. Inspection, acceptance

If the Purchaser requests that we carry out other inspections of the zinc or colour coating than those provided for by DIN EN ISO 1461, including where appropriate DAST Directive 022 Zone of Confidence 1, or by DIN EN ISO 12944-7 Clause 6.3, the nature and scope of such tests must be agreed separately. All inspections will be carried out at our factory unless otherwise agreed. Acceptance will be effected either explicitly at the handover or implicitly with the unconditional acceptance at our factory. Inspections in the presence of the Purchaser or its representative must be agreed separately and will be carried out at our factory on the acceptance date.

9. Liability for defects, complaints about defects

9.1 We will be liable for defects as follows: apparent defects must be reported in writing immediately – within eight days of receipt – but before further processing in all cases. Defects that become apparent later must be reported immediately after they have been discovered. We shall immediately eliminate defects for which the cause already existed at the time risk was transferred free of charge and at our discretion by repair or replacement. The Purchaser may withdraw from the contract or demand a reduction in price (discount) in the event of the supplementary performance failing.

9.2 Warranty claims do not exist

– if the defect was caused by work pieces that were not manufactured in such a way that they were suitable for hot-dip galvanising and we were unable to determine such unsuitability with the naked eye.

– if the defect occurred after the risk was transferred as a result of inappropriate or improper storage or use, incorrect or negligent treatment or exceptional external influences.

– in the event of insignificant deviations from the agreed quality or insignificant impairment of usability. If the Purchaser or third parties carry out modifications or repair work, no warranty claims may then be made for defects for these and the resulting consequences.

9.3 On consultation with us, the Purchaser must give us the time and opportunity required to carry out all supplementary performances that we deem necessary; otherwise we will be released from the liability for defects.

9.4 Purchaser claims arising out of required supplementary performances, particularly in regard to transport, travel, labour and material costs, are excluded to the extent that these expenses have increased due to the fact that the delivered item has subsequently been transported to a location other than the Purchaser’s unless the transport was in line the intended use. The Purchaser will bear corresponding costs incurred by the deliverer.

9.5 Warranty claims due to defects will lapse 12 months from acceptance in accordance with Clause 8 or from notification of dispatch to the Purchaser, due to defects in buildings and items that were used for buildings in accordance with their customary purpose and that have caused them to be defective will lapse after five years.

9.6 Within the statutory period of limitation as set out in the provisions of this Clause 9, we will also be liable for defective supplementary performance work or defective replacement deliveries.

9.7 In the event of complaints about defects, payments by the Purchaser may be withheld to an extent which is reasonably proportionate to the defects that have occurred. The Purchaser may only withhold payments if a complaint about defects was made about the justification of which no doubt can exist. If the complaint about a defect was unjustified, we will be entitled to demand compensation from the Purchaser for the expenses we incurred.

9.8 If small parts are supplied to us as bulk goods, the total weight of the small parts must be stated for the purposes of identification on the delivery note. The reject and shortfall quantity at delivery may only total a maximum of 5% of the weight supplied to us and that is verifiable by us. We shall be liable for shortfalls and parts about which complaints are made beyond that within the scope of the conditions set out above and below.

10. Compensation

10.1 We will be liable under the statutory provisions without restriction for damages caused by an assurance (guarantee) we have given.

10.2 We will also be liable for damages resulting from injury to life, limb or health, unless we were not responsible for the breach of duty, and for damages based on a breach of duty by us, unless we did not cause the breach of duty either intentionally or grossly negligently. Our liability under the product-liability law remains unaffected, insofar as it is compulsory, as does our liability as set out in Clause 3.5.

10.3 We will otherwise not be liable for damages for defects or other breaches of duty. Excluded are damages due to a culpable violation of substantial contractual obligations; our liability in this event will be limited to the damage we foresaw at the conclusion of the contract as a possible consequence of the breach of duty or that we were aware of or should have been aware of or should have foreseen in view of the circumstances.

10.4 Our liability for defects or other breaches of duty as set out in the above Clause 10.3 is, where damage to property is concerned, also limited to the sum insured by the liability insurance we maintain (sum insured: five million euros), for economic losses to profits lost due to the use of the specific delivery, at most to the sum covered by our insurance, which totals a maximum of one million euros.

10.5 The breach of duty by our legal representatives or our vicarious agents constitutes the equivalent of a breach of duty by us.

10.6 Any existing statutory rights of withdrawal will not be affected by the above provisions.

11. Final provisions

11.1 The place of fulfilment for all obligations arising out of the contractual relationship will be our company’s registered offices. The court at the location of our company’s registered offices will be responsible for all disputes, also in this regard for actions filed under summary proceedings based on bills of exchange, promissory notes and cheques, if the Purchaser is a general merchant, a corporate body under public law or a special entity subject to public law.

11.2 The contract relationship is subject to German law.

11.3 We will store the data required for business dealings (EDP).