

# ALLMETAL GMBH TERMS OF SALE AND DELIVERY (JANUARY 2009)

## 1. General

The following terms of sale and delivery apply unless alternative agreement is agreed in writing.

## 2. Quotations and orders

Quotations given by the Seller apply for one month after the date on which they are given. Acceptance by the Buyer must be received by the Seller within 30 days. Orders are not binding on the Seller until the Buyer has received an order confirmation in writing.

## 3. Cancellation and alteration of orders

Cancellation or alteration of orders may only take place subject to the written approval of the Seller. The Buyer must reimburse the Seller for any costs and losses incurred on cancellation of orders.

## 4. Delivery

Delivery is ex works in accordance with "Incoterms 1990", unless any other agreement is reached in writing. Also see Section 7. below. The Seller's risk in connection with any sale lapses on delivery of the goods concerned in accordance with "Incoterms 1990".

## 5. Tolerances, weights and quantities

The Seller's standard tolerances apply and are available at request. Weights are calculated theoretically and are not binding on the Seller. To allow for production processes, the Seller reserves the right to increase or reduce the quantity of each order item by up to 5%.

## 6. Delivery times and delays

The Seller's delivery time is to be regarded as the time the goods are expected to be dispatched, unless any other agreement is reached in writing. If the Seller is unable to observe the agreed delivery time he must inform the Buyer of the fact, explaining the reason for the delay and if possible the expected delivery time (cf. point 13 below). If the Seller fails to observe the delivery time mentioned in point 6.b. above, the Buyer may cancel the agreement by written statement with regard to the part of the order which has not been produced at the time in question.

## 7. Prices

Prices are exclusive German V.A.T. and any other public duties. Prices are in EURO, unless other written agreements are made. As stipulated in Section 4, delivery is ex works. Unless otherwise stipulated in a contract between Seller and Buyer, freight costs will be invoiced as extra required payments when the shipment quantity is less than 10,000 meters. Seller will pay freight costs when quantities shipped are 10,000 meters or greater. Prices are based on current raw material costs and other material costs, wages/salaries, exchange rates and duties on the date stated in the quotation, order confirmation or invoice. Changes in current duties, exchange rates and other costs which occur after confirmation of orders and which increase the Seller's prices will be invoiced as extra payment to the agreed prices for orders with scheduled delivery more than 45 days in the future. In case of consecutive orders, the customer will be informed of any increase in the Seller's prices before such prices apply.

## 8. Payment

Payment must be made in accordance with the terms of payment stipulated in the order confirmation. Payment must be received by the Seller by the date on which it is due. If payment is delayed for some reason or if the Buyer proves incapable of fulfilling the agreement, or if the Buyer lacks credit-worthiness, the Seller is entitled to stop meeting his obligations. The Seller is also entitled to terminate the agreement and claim compensation for his expenses and losses. If the terms of payment are not met in time, penalty interest of 1,5% per month will be charged. The Seller is also entitled to change the terms of payment and require that any amounts due shall be paid immediately if the Buyer fails to observe the terms of payment, and if the Buyer lacks creditworthiness in the Seller's opinion.

## 9. Ownership of goods

The Seller retains ownership of the goods delivered until payment has been made in full to the extent that such a retention of ownership is valid according to current German Law.

## 10. Return of goods and packaging

Goods may only be returned subject to the Seller's prior approval. The Buyer must secure that returned goods and packaging (wooden boxes and steel containers, etc.) are packed safely and protected. The Buyer must reimburse the Seller for any costs incurred owing to improper packaging or damage to returned goods and packaging.

When goods are delivered in containers, the containers are always the property of the Seller unless they are invoiced by the Seller. Containers must be returned as quickly as possible in accordance with the existing agreement with the Seller. The Buyer must immediately on receipt of the goods carry out the inspection necessary to ensure that delivered goods are in accordance with the contracts. The Buyer loses the right to claim defects in goods if he fails to inform the Seller of any such claim stating the nature of the defects concerned immediately after the moment he discovers (or should have discovered) such defects.

In case of damage during transport, the Buyer must, on receipt of the goods, provide to the seller the nature and extent of the damage in writing together with the freight bill.

The Seller is entitled to remedy defects and must provide any such remedy without undue delay. The Seller meets the costs of such remedies.

If the Seller fails to provide the necessary remedy within a reasonable period of time, the Buyer is entitled to inform the Seller in writing of a deadline for the provision of a remedy. If the Seller fails to meet his obligation to provide a remedy within this deadline, the Buyer is entitled to require compensation for his loss. However, this compensation cannot exceed an amount equivalent to the agreed price.

If the Seller accepts a complaint, the Seller's liability is limited to the value of the goods concerned, and can always be met in full by redelivery of the defective goods. Consequently, the Seller is not liable in any circumstances for costs and losses which the defect concerned may have caused, including operational losses, loss of profits, or any other indirect losses. However, this limitation in the Seller's liability does not apply if the Seller is guilty of gross negligence.

If the services provided by the Seller consist of processing the Buyer's products, the Seller's liability is limited to an amount corresponding to the price of such services.

## 12. Product liability

The Seller is only liable for personal injury if it can be proved that the injury is due to mistakes or negligence on the part of the Seller or others for whom the Seller is responsible.

The Seller is not liable for damage to property or movables which occurs while the goods concerned are in the possession of the Buyer. Nor is the Seller liable for damage either to products produced by the Buyer, or to products in which such products are contained. Otherwise, the Seller is liable for damage to property and movables on the same terms as those applying to personal injury.

The Seller is not liable for damages when the goods are not properly stored in dry and cool environments.

The Seller is not liable for operational losses, loss of profits, or other indirect losses.

The above-mentioned limitations on the Seller's liability do not apply if the Seller is guilty of gross negligence.

If product liability is imposed on the Seller with regard to third parties, the Buyer must indemnify the Seller to the extent to which the Seller's liability is limited according to the points made above.

## 13. Force majeure

The Seller is not liable for the failure to fulfil his obligations if he can prove that this failure is due to obstacles beyond his control, e.g. strikes, lock-outs, destruction of production plant, production breakdown or the failure of material supplies, and that at the time the agreement was reached he could not reasonably have been expected to consider such obstacles, or avoided or solved them or their consequences.

The Seller must inform the Buyer immediately if any such obstacles arise.

## 14. Legislation and venue in case of disputes

All disputes shall be settled according to German Law. Exclusive place of jurisdiction shall be Leipzig, Germany.