

General Sales Conditions of SIPRO STAHL SCHWEIZ for the EU

- SIPRO Siderprodukte AG
- SIPRO Beltrame AG
- VENETE Siderprodukte AG
- DONALAM Siderprodukte AG
- PITTINI Siderprodukte AG

I. Application, conclusion of contract

1. These General Conditions of Sale (Conditions) shall apply to all present and future contracts with commercial buyers, with public legal entities as well as public trusts regarding deliveries and other services. The Buyer's purchase conditions shall not be binding even if we do not expressly object to them again after their receipt.
2. Our offers are non-binding to us. Oral agreements, promises, assurances, guaranties and statements about the designated use of our products made or given by our sales staff shall not be binding unless confirmed by us in text form.
3. The provision with test certificates according to DIN EN 10204 requires consent in text form. We are entitled to forward copies of such certificates and to make anonymous our supplier and the issuer in such copies.
4. Any trade terms shall, in cases of doubt, be interpreted according to the Incoterms as amended from time to time.

II. Prices

1. Unless otherwise agreed upon, the prices are understood ex factory or ex warehouse plus freight, value added tax and import charges. The merchandise will be invoiced "gross for net".
2. In case of direct deliveries/sales we may increase the agreed price to the same extent they are increased by our sub-supplier before the delivery of the goods, provided that there is a period of more than three months between the conclusion of the contract and delivery. The Buyer may in such cases rescind from the contract, provided that their rescission notice reaches us instantly after receipt of our notification of the price increase.

III. Payment and Set-Off

1. Payment shall be made immediately without cash discounts so that we can dispose of the sum on the due date. This also applies if the test certificates according to DIN EN 10204 are not part of the delivery or arrive late. Any payment transfer costs shall be borne by the Buyer. The Buyer may retain or set off any counterclaims only as far as such claims are undisputed or have become legally binding and as they are based on the same contractual relation with the Buyer and/or as they would entitle them to refuse the fulfilment of their contractual duties under section 320 BGB.
2. Unless otherwise agreed upon, our invoices are due within 30 days from date of invoice. Should the Buyer default in payment or exceed the term of payment, we will charge default interest at the statutory rates (Sect. 288 BGB), unless higher rates have been agreed upon. Additionally, we charge a default allowance of 40.00 euros. We reserve the right to claim further damages resulting from late payment.
3. Should it become evident after the conclusion of the contract, that payment is jeopardised by the Buyer's lack in financial means, or should the Buyer be in default with a considerable portion of the amount due or should other circumstances arise which show a significant deterioration in the Buyer's financial position, we are entitled to refrain from any further performance. In such cases, we can also demand payment of all claims from the current business relationship with the Buyer which are not yet due.
4. Any agreed upon cash discount always relates to the invoiced value excluding freight and will only be granted if and in so far as the Buyer has completely paid all payables due at the time of the discount. Unless otherwise agreed upon, discount periods shall begin with the date of the invoice.

IV. Execution of Deliveries, Delivery Times and Dates

1. Our commitment to deliver is subject to our correct and timely self-delivery and, in case of imported material, additionally subject to the timely receipt of monitoring documents and import licenses.
2. Any confirmation as to delivery times shall only be approximate. Delivery times shall commence with the date of our order confirmation and are subject to the timely clarification of any details of the order as well as

of the fulfilment of any of the Buyer's obligations, e.g. to produce official certifications, to provide letters of credit and payment guarantees, to pay agreed instalments or to return approved drawings.

3. Any agreed delivery time shall be considered to be met if and in so far as the goods have left the plant or our warehouse at such time or date. If and in so far as the goods fail to be despatched at the agreed time for reasons not attributable to us, the agreed delivery time shall be considered to have been met on the day on which the goods have been notified to be ready for dispatch.

4. The Buyer has to ensure an undisturbed delivery of the goods and shall refer timely to difficult delivery conditions. The Buyer shall unload properly and without delay. If we or third parties assist in unloading, no legal obligation is incurred, and the risk is entirely with the Buyer.

V. Retention of Title

1. The goods delivered to the Buyer shall remain our property until the full purchase price is paid. The Buyer shall take all measures required to preserve the retention of title - or of an equivalent security in the country of their branch or in a different country of destination -, and to provide the corresponding evidence upon our request.

2. To the extent permitted by the laws of the country, in which the goods are located, the following additional regulations apply:

a. The goods delivered to the Buyer shall remain our property (Reserved Property) until all of the Buyer's accounts resulting from the business relationship with them, in particular, any account balances have been settled (current account reservation). This condition shall apply to any future as well as any conditional claims and such cases where the Buyer will effect payments on specifically designated claims. As soon as the Buyer has settled their accounts with us in full, the Buyer shall obtain title to those goods, which were delivered to them before such payment was effected. The current account reservation does not apply in case of advance payment or cash transactions.

b. With regard to processing or manufacturing of the Reserved Property, we shall be deemed to be the manufacturer within the meaning of § 950 BGB (German Civil Code) without committing us in any way. The processed or manufactured goods shall be regarded as Reserved Property within the meaning of clause 2a) of these Conditions. If the Buyer manufactures, combines or mixes the Reserved Property with other goods we shall obtain co-ownership in the new goods in proportion to the invoiced price of the Reserved Property to the invoiced price of the other goods. If, by such combining or mixing, our ownership expires, the Buyer herewith transfers to us any rights which the Buyer will have in the new stock or goods in proportion to the invoiced price of the Reserved Property, and the Buyer will keep them in safe custody free of charge. Our co-ownership rights shall be regarded as Reserved Property within the meaning of clause 2a) of these Conditions.

c. The Buyer may resell the reserved property only within the normal course of their business in accordance with their normal business terms and provided they are not in default of payment and provided also that any rights resulting from such resale will be transferred to us in accordance with clause d) - e) of these conditions. The Buyer shall not be entitled to dispose of the Reserved Property in any other way.

d. The Buyer hereby assigns to us any claims resulting from the resale of the Reserved Property. Such claims shall serve as our security to the same extent as the Reserved Property itself. If the Reserved Property is resold by the Buyer together with other goods not purchased from us, then any receivables resulting from such resale shall be assigned to us in the ratio of the invoiced value of the other goods sold by the Buyer. In the case of resale of goods in which we have co-ownership rights, the assignment shall be limited to the part, which corresponds to our co-ownership rights.

e. The Buyer shall be entitled to collect any receivables resulting from the resale of the Reserved Property. This right shall expire if withdrawn by us, at the latest if the Buyer defaults in payment or fails to honour a bill of exchange or declares bankruptcy. We shall exert our right of revocation only if and as far as it becomes evident after the conclusion of the contract that payment resulting from this contract or from other contracts is jeopardised by the lack of Buyer's ability to pay. The Buyer shall - upon our request - immediately inform their customers of such assignment and to forward to us any information and documents necessary for collection.

f. The Buyer shall immediately inform us of any seizure or any other attachment of the Reserved Property by a third party. The Buyer shall bear any costs necessary to suspend such seizure or attachment, to separate or to remove the Reserved Property, if and in so far as such costs are not borne by a third party.

g. Should the total invoiced value of our existing securities (collateral) exceed the amount of the secured receivables including additional claims for interest, costs etc. by more than 50 %, we shall - upon the Buyer's request - release pro tanto collateral at our discretion.

VI. Weights

1. Regarding the weight of the goods, the weight determined by our suppliers' scales shall be decisive. The weight shall be evidenced by presentation of the pertinent weight check. We may also determine the weight without weighing according to length and/or theoretically on the basis of the statistical methods. We are entitled to increase the theoretical weight by 2 ½ % (commercial weight) to compensate rolling and/or thickness tolerances and to bill our products based on a commercial weight of 8 kp/dm³.
2. Any indications given in the delivery notes as to the number of pieces, bundles etc. are not binding, if and in so far as the goods are invoiced by weight. Where, in accordance with trade usage, the goods are not weighed piece by piece, the total weight of the delivery shall prevail. Any difference with regard to the calculated weight of the single pieces shall be proportionally allocated to them.

VII. Testing and Inspection

1. Where testing and inspection of the goods has been agreed upon, the goods must be inspected in our warehouse immediately after the Buyer has been informed that the goods are ready for dispatch. The Buyer shall bear their personal inspection costs, whereas the costs of inspection will be invoiced to them in accordance with our price list.
2. Should, through no fault of ours, an inspection of the goods fail or be delayed or be incomplete, we shall be authorised to dispatch the goods without prior inspection or to store them at the Buyer's expense and risk and to invoice the goods to the Buyer.
3. Any testing and inspection of goods regarding parameters beyond the standards agreed upon is at the risk and expense of the Buyer.

VIII. Callable and Continuous Deliveries

1. Where the contract provides for callable and continuous deliveries, the Buyer shall divide the quantities and grades of the calls into approximately equal monthly shipments. Otherwise we shall be entitled to specify them at our own fair and just discretion.
2. In case of callable deliveries, the Buyer has to pick up or have delivered the total quantity arranged for the respective order. If no specific call-in dates have been arranged, the whole quantities shall be picked up or delivered within the period fixed in the contract.
3. Where the single calls for delivery exceed the total contractual quantity, we shall be entitled, yet not committed, to deliver the surplus quantity and invoice it at the prices applicable at the time of the call or the delivery.

IX. Dispatch, Passing of Risk, Packaging, Partial Delivery

1. We shall be entitled to choose the route and mode of dispatch as well as the forwarding agent and the carrier.
2. The Buyer shall immediately request delivery of those goods, which have been notified to them as ready for dispatch. Otherwise we are entitled, upon reminder, to ship such goods at the Buyer's cost and risk or to store them at our discretion and to invoice them to the Buyer.
3. Can, by reasons not attributable to us, the goods not be shipped or will it become substantially difficult to ship the goods via the designated route or to the designated place within the designated time, we reserve the right to ship them via a different route or to a different place. Any additional costs will be borne by the Buyer. In such cases we will ask the Buyer for their prior comments.
4. In the case of call-off orders the risk is transferred to the Buyer at the time of the provision of the goods for collection. In all other transactions, including freight prepaid and freight-free deliveries, the risk of loss or damage to or even of confiscation of the goods shall pass on to the Buyer at the time where we hand them over to the forwarding agent or to the carrier, at the latest with their departure from our warehouse. We will buy insurance only if requested to by the Buyer and at their cost. The Buyer shall unload the goods at their cost.
5. The goods will be delivered unpacked and not be protected against rust. Only if agreed upon, the goods will be delivered packed. Besides, any package, protection and/or transport device will be supplied according to our experience and at the Buyer's cost. We will take back such devices only at our warehouse. We will not bear any costs for their re-transport or disposal.

6. We shall be entitled to carry out partial deliveries to a reasonable extent. We may also exceed or reduce the agreed quantities in an adequate manner. Where quantities are indicated as “approximate”, we may exceed or fall below the agreed quantity up to 10 %.

X. Liability for Material Defects

1. The inner and outer properties of the goods, especially their quality, grade and dimensions are to be determined by the agreed or short of a deviating agreement by the DIN and DIN EN standards in force at the time of the conclusion of the contract, otherwise by practice and commercial custom. References to standards and other sets of regulations, to test certificates according to DIN EN 10204 and other attestations as well as particulars of qualities, grades, dimensions and use of the goods are no warranties or guaranties, just as little declarations of conformity and corresponding markings such as CE and GS.

2. For the inspection of the goods and the indication of defects the statutory provisions apply, it being understood that the duty to inspect the delivered goods includes the inspection of any test certificates according to or correlating to DIN EN 10204 and any defects of the goods and test certificates are notified to us in text form.

3. In case the Buyer intends to install the merchandise, prior to installation, the Buyer has the obligation to inspect the merchandise with regard to properties relevant for the application in question and to notify us of defects without delay. Any failure of the Buyer to inspect the relevant properties of the merchandise prior to its installation is deemed as gross negligence. In such a case, the Buyer may assert rights in relation to these properties only if the defect had been deliberately concealed or in case of a guarantee for the respective quality of the merchandise.

4. If and in so far as the Buyer’s claim for defects is justified and has been made in time, we may, upon our discretion, remedy the defect or deliver non-defective goods (“substitution”). Should we fail or decline the substitution, the Buyer may resort to their statutory rights. In cases where the defect is only minor or where the goods have already been resold, processed or transformed, the Buyer may only reduce the purchase price.

5. We will reimburse the Buyer for their expenditures in connection with the substitution only as far as such expenditures are reasonable and proportional to the value of the goods, in no case more than 150 % of the purchase price. Costs of the Buyer related to the self-remedy of defects without the legal requirements being fulfilled, are excluded, the same applies for costs for disassembly of the defective and assembly of replacement goods, in case due to a transformation of the Buyer before the assembly, the assembled goods provide substantially different features than the original merchandise delivered by us. Expenditures accrued by delivery of goods to another place than that of the agreed performance, will not be accepted.

6. If and in so far as the goods are subject to contractually agreed testing and inspection by the Buyer, such testing and inspection shall bar any claims for such defects which might have been determined by the agreed type of testing and inspection. Has the Buyer, by their own negligence, not learned of the defect, and then they may claim only such defects which we have knowingly not disclosed to them or which are subject to a guarantee.

If a defect has remained undetected owing to the negligence of the Buyer, the Buyer may only assert rights in respect of this defect if we have fraudulently concealed the defect or in so far as we have assumed a warranty for the quality of the item.

7. No warranty shall be given to goods sold as declassified material regarding such defects either specified in the contract or to those normally to be expected. Goods classified as “Ila goods” (“downgraded goods”) are not subject to any warranty, subject to XI no. 2 of these terms. Unless otherwise agreed and as far as the respective standards are fulfilled, surface corrosion is no defect. Our further liability is subject to Section XI of these Conditions.

8. Any other claims of the Buyer shall be governed by Section XI of these terms and conditions. Rights of recourse of the Buyer according to §§ 478, 479 BGB shall remain unaffected.

XI. Recovery of damages and Limitation Periods

1. Our liability for breach of contractual or extra-contractual obligations, in particular for non-performed or deferred deliveries, for breach of duties prior to the contract (“Verschulden bei Vertragsanbahnung”) as well as for tortious acts - including our responsibility for our managerial staff and any other person employed in performing our obligations - shall be restricted to damages caused by our wrongful intent or by our gross negligence and shall in no case exceed the foreseeable losses and damages characteristic for the type of contract in question. In all other respects, our liability is excluded, also for damages caused by defects and consequential damages caused by defects.

2. The aforesaid restrictions shall not apply to such cases where we breach our fundamental contractual obligations and therefore the accomplishment of the purpose of the contract is at risk or where the non-fulfilment of the obligations, the observance of which the contracting party relies on and may rely on regularly, renders impossible the proper execution of the contract. The aforesaid restrictions shall neither pertain to damages to life, to the body or to health caused by our fault nor to any cases where we have guaranteed certain characteristics of the goods, nor shall such clause affect our statutory liability laid down in the Product Liability Act (Produkthaftungsgesetz) of 15/12/89. Any statutory rules regarding the burden of proof shall remain unaffected by the aforesaid.

3. Unless otherwise agreed to any contractual claims which the Buyer is entitled to in connection with the delivery of the goods, including claims for damages for defective goods, shall fall under the statute of limitations within a period of one year after the goods have been delivered to the Buyer. This restriction shall not apply to our liability and to the limitation of claims resulting from the delivery of goods that have been used for a building and have resulted in the defectiveness of the building, as well as from breaches of contract caused by our wrongful intent or by our gross negligence; neither to damages to life, to the body and to health caused by our fault nor to any recourse claims under sections 478, 479 BGB. For these claims, the statutory limitation periods shall apply.

XII. Place of Performance / Jurisdiction / Applicable Law

1. The place of performance for our deliveries shall be the supplying plant in cases of “ex works deliveries”, in all other cases and for payments of the Buyer it shall be our business seat. The place of jurisdiction shall be at our business seat or - at our discretion - at the Buyer’s seat.

2. All legal relationships between us and the Buyer shall be governed by the laws of the Federal Republic of Germany, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).

XIII. Applicable Version

In cases of doubt, the German version of these General Conditions of Sale shall apply.