

Version 12/2017

## **Sales, Delivery and Payment Conditions of LST Linster Stainless Trading GmbH**

### **1. General Conditions**

- 1.1 Our deliveries and services shall be performed exclusively subject to the following conditions. The purchaser's terms and conditions will not be acknowledged unless we have approved their validity in writing. Our following conditions shall also apply, if we deliver to the purchaser with knowledge of conditions conflicting with or deviating from our following conditions without reservation. Our conditions also apply to all future transactions in the scope of a continual business relationship with the customer.
- These conditions also apply to legal entities and special funds under public law for deliveries and other services with the inclusion of service contracts and the delivery of any inadmissible items.
- 1.2 By third party transactions the conditions and shipping provisions of the commissioned supplier shall also apply.
- 1.3 We shall store, and process customer data insofar as required for the correct performance of the business contract.

### **2. Conclusion of Contract**

- 2.1 Our offers are subject to change. All information on our products is to be viewed as approximate averages. It is not a guarantee of properties. Customary branch deviations (manufacturing tolerances and the use of fabrication lengths) are permitted as is delivery of greater or lesser volumes of up to 10%. Our sales units are, depending on the item: metres, kilogrammes, piece or other agreed units. Samples are nonbinding viewing samples. Properties of the samples do not apply as guaranteed.
- 2.2 The purchaser's offers only apply as accepted on our part through an explicit declaration. A lack of response following such an offer does not represent an acceptance. The same shall also apply to confirmation notifications issued in electronic form, unless the electronic communication form is agreed by both parties to the business contract and the communication is to the recipient address expressly provided. Also, no response to offers issued in this form does not represent acceptance.

- 2.3 The express declaration of an acceptance of an offer on our part can only come from an unrestrictedly authorised person; if this is not the case, queries only apply as accepted when these are processed immediately following issuing of the contract or performed punctually. Correspondingly oral agreements that are not concluded with an aforementioned person shall only be effective with written confirmation.

### 3. Prices and Payment Conditions

- 3.1 Also by third-party transactions the prices applicable on the delivery date will apply. We invoice for alloying, scrapping and other additional fees as well as the required packaging in accordance with the prices applicable on the date of delivery. All prices are net ex works or warehouse; the applicable statutory VAT will be invoiced separately.
- 3.2 If the contract partner is commercial and if between conclusion of contract and delivery date there is a significant change to certain cost factors, such as salaries, raw materials or shipping the agreed price may be adjusted corresponding to the influence of the determining cost factors to a reasonable scope.
- 3.3 Our invoices are payable, if there is no other binding agreement, in full within 30 days of the shipping of the goods (date of the delivery note). Payment is to be free of charges for us. If the purchaser does not pay by this time, payment will be defaulted. By initial delivery or in the event of default for earlier deliveries we have the right to demand payment or security in advance for our claim to payment.
- 3.4 If payment is issued in the form of remittance orders, particularly cheques the costs for redemption and collection shall be the responsibility of the purchaser. Cheques shall only be accepted subject to the possibility of discount, just for payment and not for fulfilment of our demands.
- 3.5 All our demands, also those arising from other contracts with the purchaser shall be payable immediately in the event of payment default or ceasing of payment by the purchaser, or if circumstances become known to us that lead to significant doubt as to the purchaser's ability to pay or creditworthiness. In this case we have the right to only perform outstanding deliveries against advance payment or security and when the condition or security is not issued within two weeks, to withdraw from the contract without the setting of a new deadline. Further claims hereby remain unaffected.

- 3.6 The purchaser may only off-set undisputed or legally established claims. He shall only have a right to retention insofar as his counterclaim is based on the same contract relationship.
- 3.7 We have a claim to the type and scope of customary securities for our claims, also insofar as these are conditional or limited.
- 3.8 This shall not prejudice the statutory provisions regarding payment default. If the purchaser is a business customer, he shall pay an interest of 9 percent above the basic interest rate. We reserve the right to prove a higher damage through default and to assert this.

#### **4. Measures, Weights, Quality**

- 4.1 Deviations to measures, weights and quality are permitted in accordance with DIN- EN, ASTM and ASME, insofar as corresponding norms are lacking then in accordance with DIN or also when this is the applicable custom. Other deviations require a separate agreement.
- 4.2 Weights or measures are determined on our calibrated scales or our timepieces and are determining for invoicing.

#### **5. Performance of Delivery, Transfer of Risk, Delivery Deadlines and Dates; Delayed Acceptance**

- 5.1 Our duty to deliver is subject to correct and punctual materials from our suppliers unless the incorrect or delayed delivery of supplies is our responsibility. The purchaser assumes the burden of proof.
- 5.2 Place of fulfilment for our deliveries is by INCOTERMS EX Works deliveries our warehouse, otherwise the delivering factory. Shipping, route and transport method are at our discretion unless otherwise agreed. We have the right to make partial deliveries if this is reasonable for the customer.
- 5.3 Delivery and transport are always at the purchaser's risk. Individual INCOTERMS clauses or the entire statute only apply if these are agreed with us in writing and not regard with reference to the purchaser's T&Cs. Risk is transferred to the purchaser, also by partial deliveries, as soon as the delivery is handed over to the person or company performing the transport or has left our warehouse for the purpose of delivery, or by INCOTERMS EX Works delivery, our factory. If the loading or transportation of the goods is delayed for reasons for which the purchaser is responsible, we have the right to store the goods at our discretion at the cost and risk of the purchaser, also to

undertake the measures considered required to receive the goods and to invoice for the goods as if delivered. The same applies if goods declared ready for shipping are not called up within four days. The statutory provisions on delayed acceptance hereby remain applicable.

- 5.4 By orders from companies § 447 BGB shall apply when delivery is with our own means of transport or from a place other than the place of performance or if we assume the delivery charges.
- 5.5 Separate agreements are required for export. We are not obligated to deliver goods manufactured for export domestically and to deliver goods manufactured for domestic deliveries abroad. We have the right to demand an export certificate and an arrival certificate (confirmation of receipt).

## 6. Packaging, Transport Materials

Insofar as customary for the industry the goods are delivered packaged. The purchaser shall assume the packaging costs. We take packaging, protective and/or transport materials back. We shall not assume the costs for return transport or for own disposal. Packaging for purposes beyond transportation or special protection e.g. for long term storage requires an express agreement.

## 7. Delivery Times, Delivery Delays

- 7.1 Delivery terms begin with the date of the order confirmation, however not before clarification of all order details. The same applies to delivery dates. Deadlines and dates are based on the sending of the goods. They already apply as met upon notification that they are ready to be dispatched, if the goods cannot be sent on time for reasons for which we are not responsible.
- All delivery terms and dates are subject to unforeseeable production disruptions and the punctual arrival of deliveries from our suppliers of raw materials and insofar as it concerns merchandise, subject to availability and punctual delivery from our suppliers.
- 7.2 If the purchaser delays in fulfilling contractual duties, also a duty to cooperate or additional duties, such as the obtaining a letter of credit, submittal of domestic or foreign certificates, issue of advance payments or similar, we have the right to reasonably postpone our delivery term and date corresponding to the requirements of our production process without prejudicing our rights arising from the purchaser's delay.
- 7.3 By terms and dates that are not expressly described as fixed on the order confirmation the customer can set us a reasonable delivery deadline after two weeks have expired for the delivery/service. First with the expiry of this subsequent deadline are we in default.

- 7.4 Terms and deadlines shall be extended irrespective of our rights from the purchaser's delay by the term by which the purchaser does not fulfil his duties towards us.
- 7.5 If by call-up orders the call-up is greater than the ordered amount, we have the right to only deliver the ordered amount or at our discretion to invoice the surplus quantity in accordance with the price applicable on that date.
- 7.6. In the event of an act of god or other events over which we have no influence and that significantly obstruct or make a delivery/service impossible, we are released from our duties from the respective contract, however by temporary obstructions only for the duration of the disruption in addition to a reasonable start up period. This also applies when these circumstances occur at our suppliers or their suppliers. Insofar as the delay is not reasonable for the purchaser, he may after our notification exercise the rights arising from § 326 para. 1 and para. 3 – 5 BGB, or § 376 HGB through an immediate written declaration. His right to withdraw only extends to the unfulfilled part of the contract.
- 7.7 Due to the branch customary long pre-production times the purchaser is first entitled to rights arising from §§ 281, 323 BGB when he has set us a reasonable delivery deadline that insofar in deviation to § 281, 323 BGB is combined with the declaration that he shall reject acceptance of the goods following the expiry of the deadline; after the unsuccessful expiry of the deadline a claim to fulfilment is excluded. A setting of a subsequent deadline with a threat of rejection is not required in the event of our final refusal to fulfil our duty.

## **8. Defective Goods, Warranty**

- 8.1 The purchaser is obligated, also when samples were sent in advance, to inspect the delivered goods immediately upon receipt for completeness and correctness. The delivery applies as approved when no complaint to defect has been received in writing, via email or fax five days following receipt at the destination or if the defect is not recognisable by a proper inspection, within five days of discovery. A defect is not given by branch customary deviations to the delivered goods from the order confirmation. By goods that are sold as declassified or used materials, the purchaser has no claims for any defects.
- 8.2 A liability for a specific purpose of use or a specific suitability shall only be assumed on our part when expressly agreed; otherwise the suitability for usage risk lies exclusively with the purchaser.

We assume no liability for any damage, loss or improper treatment of the goods following the transfer of risk.

- 8.3 In the event that the purchaser complains of a defect, he shall demonstrate this immediately. The disputed goods are to be made available to us or returned at our expense for inspection or subsequent performance at our request.
- 8.4 Transport damage is to be reported to us and the transport company; in this respect the reporting duties of the General German Transport Provisions (Allgemeinen Deutschen Speditionsbedingungen) will apply.
- 8.5 By justified complaints to defects we are in the case of defects or lack of a characteristic guaranteed on our part of the delivered goods obligated to subsequent performance through repair or replacement delivery at our discretion. We hereby assume the rectification costs insofar as these are not increased by the delivered item being transported by the purchaser to a different location from the delivery destination. If subsequent performance is unsuccessful the purchaser can demand a reduction of the purchase price or revocation of contract after setting us a reasonable deadline of at least ten weeks, unless this is unnecessary in accordance with the statutory provisions. In the event of a withdrawal from the contract the purchaser is liable for damage, loss and services not used not only for the own duty of care, but for all negligence. Further claims, e.g. for compensation or refunding of wasted costs are only valid in accordance with Clause 10 of these T&Cs.
- 8.6 The expiry deadline in the event of a defective delivery ends, excluding cases of intent or gross negligence, one year after delivery. Unaffected by this, the statutory expiry deadlines apply to goods that are used corresponding to their customary use for a building and the defect caused by these; subsequent performance or replacement delivery do not restart the expiry deadline.
- 8.7 Claims against us for the fraudulent concealment of a defect or express assumption of a guarantee of a characteristic are solely based on the statutory provisions.
- 8.8 If the end-customer of the goods in the delivery chain is a consumer, per the further requirements of § 377 HGB the customer is entitled to recourse of the statutory provisions of §§ 478 and 479 BGB, however he is only entitled to compensation and expense reimbursement in accordance with the provisions of Clause 10 para. 1 and para. 2.

8.9 Fundamentally it is required in all cases of regress claims that the purchaser, when not a consumer, has fulfilled his complaint obligations in accordance with § 377 HGB.

## 9. Retention of Title

9.1 By contracts with consumers the delivered goods remain our property (reserved goods) until the fulfilment of our claim.

9.2 By contracts with businesses the delivered goods remain our property (reserved goods) until the fulfilment of all claims to which we are entitled in the scope of the business relationship, including any claims arising in the future and also from simultaneous or later concluded contracts. If there is a current account relationship between us and the company the retention of title related to the acknowledged balance. If with the payment of the purchase price by the company an obligation to accept the cheque or bill of exchange is founded, our retention of title does not expire until the redemption of the cheque with the company as drawee.

9.3 By the culpable breach of important contract duties by the purchaser, in particular payment delay, we have the right if the conditions for a withdrawal from the contract are given to seize the goods, or where applicable to enter the purchaser's company and to remove the goods. We can also prohibit the further processing of the goods. The seizure of the goods on our part represents a withdrawal from the contract, in the event of a seizure by a third-party the purchaser is to inform us immediately in writing, by a threatened risk also through another suitable means.

9.4 Processing of the reserved goods by a company occurs for us as manufacturer in accordance with § 950 BGB, without obligating us. The processed goods apply as reserved goods under the terms of these provisions.

9.5 By processing and combination of the reserved goods with other goods by a commercial purchaser we are entitled to co-ownership of the new object in relationship to the invoice value of the reserved goods (total invoice amount including VAT). Should our property be dissolved through processing, compounding or combination, the company already now transfers the property or expectant rights to the new inventory or item to the value of the invoice amount. If the reserved goods are dissolved, in the event of processing we retain co-ownership to the relationship of the invoice amount of the reserved goods to the invoiced amount for of other used goods and the purchaser shall store these products for us free of charge. Our co-ownership rights apply as reserved goods under the terms of these provisions.

- 9.6 The purchaser may only resell the reserved goods in customary business transactions to his normal terms and conditions of business, as long as he is not in default. He is not entitled to otherwise dispose of the reserved goods. Reselling also applies to the reserved goods for the fulfilment of service and work supply contracts.
- 9.7 If the purchaser is a company, he already now transfers his claims from reselling the reserved goods including all additional rights to us. We hereby accept the assignment. They serve to the same scope for security as the reserved goods under the terms of this provision. If there is a current account relationship between the company and the buyer, the assignment also applies to the acknowledged balance as well as in the event of insolvency of the purchaser to the then available “causal” balance.
- 9.8 If the reserved goods are resold together with other goods by the purchaser, the claim from the resale shall be assigned to us in relationship to the invoice amount of the reserved goods to the invoice amount of the other goods. We hereby accept this assignment. In the event of resale of goods to which we hold co-ownership under the terms of the provisions above, we shall be assigned the part of the claim corresponding to the portion of co-ownership.
- 9.9 The commercial purchaser is entitled to collect accounts receivable also following assignment. Our authorisation to collect the account receivable ourselves hereby remains unaffected, however we are obligated not to collect the account receivable for as long as the purchaser fulfils his payment obligations, does not default payment and in particular does not file an application for insolvency proceedings on his assets or a cease of payment arises. If this is the case, we can demand that the purchaser informs us of the assigned claims and the debtor, provides all necessary information required for collection, issues the associated documents and informs the debtor (third-party) of the assignment.
- 9.10 The purchaser is not authorised to assign accounts receivable. An assignment in the form of real factoring is permitted under the condition that he informs us of the factoring bank and the accounts maintained there and if the factoring profit exceeds the value of the assured claim.
- 9.11 We are obligated to release the securities to which we are entitled at the demand of the purchaser insofar as the implementable value of our securities exceeds the secured claims by more than 10%. The choice of security to be released is at our discretion.

## 10. General Limitation of Liability

- 10.1 For claims to compensation and refunding of expenses for culpable actions, irrespective of the legal reason, incl. breach of duty, unauthorised action, producer liability (excluding any liability from the Product Liability Act) we are only liable in the event of soft negligence for a breach of significant duties that endanger the purpose of the contract and only for typical and foreseeable damage. Otherwise our liability for soft negligence is excluded. In the event of liability on the grounds of gross negligence we are only liable for typical foreseeable damage. Liability without fault is excluded.
- 10.2 The exclusion of liability and limitation of liability in paragraph 10.1 does not apply to liability for personal injury, endangerment of health or death, by the assumption of a guarantee for characteristics or by the fraudulent concealment of a defect.
- 10.3 All claims to compensation and a refunding of expenses against us irrespective of the legal grounds expire one year following the transfer of risk, in the event of a tortious liability from knowledge or by gross negligence knowledge of the circumstances founding the liability, or the person responsible for compensation. This does not apply to a culpable act, in the cases mentioned in paragraph 10.2 and by an object that in accordance with its customary purpose is used for a building and has caused its defect. Any shorter statutory statutes of limitation shall have priority.
- 10.4 If the end-customer of the goods is a consumer, the statutory provisions shall apply to an expiry of any recourse claims of the purchaser against us.
- 10.5 The provisions of paragraphs 10.1 to 10.4 also apply to the benefit of our employees.

## **11. Manufacture in Accordance with the Purchaser's Instructions**

- 11.1 For manufacturing in accordance with customer drawings, samples and other instructions from the purchaser we shall assume no warranty or liability for the suitability of the function of the product and for any other defects, insofar as these are due to circumstances that occur through the customer's instructions. The purchaser shall release us from any third-party claims, also arising from product liability against us on the grounds of damage caused by the goods, unless we have culpably or grossly negligently caused the damage.
- 11.2 The moulds, tools and construction documents we manufacture that are used to perform the contract are exclusively our property. The purchaser has no claims to these, also when he has shared or does share the costs for the creation of moulds, tools and construction documents.

## **12. Applicable Law, Priority of the German version**

The law of the Federal German Republic shall apply under the exclusion of the UN CISG dated 11.04.1980.

In case of interpretation necessities, the German version of the T+C's is taking priority to the English version.

## **13. Final Provisions**

13.1 The place of performance for both parties is Hilden unless otherwise expressly agreed.

13.2 If the purchaser is a commercial customer, legal entity or special fund under public law the legal venue is Hilden, unless another legal venue is mandatorily stipulated. We are however entitled to sue the purchaser at his general legal venue.

13.3 The purchaser's rights arising from contracts concluded with us are not transferable.

13.4 In the event of the any legal invalidity of individual provisions of these T&Cs the provision of § 306 para. 1 BGB shall apply without restriction.

13.5 We adhere without restriction to the provisions of the Federal Data Protection Act and the Data Protection Ordinance.