

**I. Scope**

1. These General Terms and Conditions of Sale and Delivery of SteelWall ISH GmbH (hereinafter referred to as SteelWall) shall apply to all - including future - contracts with companies, legal entities under public law and special funds under public law for deliveries and other services, including contracts for services, consultations, proposals and other ancillary services. The purchasing conditions of the Purchaser shall not be recognized, even if SteelWall does not expressly object to them again after SteelWall receives them.
2. Any regulations or supplements deviating from these Terms and Conditions must be made in writing.
3. "Purchaser" within the meaning of these Terms and Conditions shall also be the "Customer" [Besteller] in the case of contracts for services.

**II. Offer and conclusion of contract**

1. The offers made by SteelWall are subject to change. Verbal agreements, commitments, assurances and guarantees made by SteelWall's employees in connection with the conclusion of the contract shall only become binding upon written confirmation by SteelWall. The transmission of telefaxes and other electronic transmissions (e.g., by email) also satisfy with the written form requirement.
2. The INCOTERMS in their latest version shall be decisive for the interpretation of commercial terms.
3. All information on dimensions, weights, illustrations, descriptions, assembly sketches and drawings in sample books, price lists and other printed matter are only approximate, but are calculated to the best of our ability, and these are non-binding for SteelWall in this respect.
4. SteelWall reserves all rights (ownership, copyrights) to its own sales documents (in particular, drawings, illustrations, descriptions, weights and dimensions, models).
5. If the parties have concluded an individual contract for the products on the basis of a framework agreement and if delivery quantities and delivery dates have not already been firmly agreed upon at that time, the individual deliveries shall be specified by delivery call-offs of the purchaser. If, contrary to its specifications, the Purchaser does not call off products, the Purchaser shall reimburse SteelWall for all costs incurred, in particular for the purchase, production and storage of the products.

**III. Prices**

1. Prices are ex works or ex warehouse plus freight and VAT.

2. Unless otherwise stipulated, the prices and conditions at the time of confirmation of the contract by order confirmation by SteelWall shall apply.
3. If, later than four weeks after conclusion of the contract, the sum of costs (charges or other external costs) arising outside SteelWall's operations changes which are included in the agreed price or newly arise, SteelWall is entitled to adjust the prices accordingly.
4. SteelWall reserves the right to increase the agreed price for goods not yet delivered if, due to a change in the raw materials and/or economic situation, serious circumstances occur which make the manufacture and purchase of the product concerned significantly more expensive than at the time of the price agreements.
5. SteelWall shall also be entitled to increase the stipulated price, if
  - a delivery deadline is subsequently extended for one of the reasons stated in Section V. 4;
  - the material or the execution undergoes changes because the documents and/or instructions given to SteelWall by the Purchaser did not correspond to the actual proportions or were incomplete or SteelWall does not receive the information required for the execution of the order in due time.

#### **IV. Payment and settlement**

1. Unless otherwise agreed or stated in SteelWall's invoices, the purchase price shall be due immediately upon delivery at the place of fulfillment without any discount and shall be paid in such manner that SteelWall can access the funds on the due date. Costs of payment transactions shall be borne by the Purchaser.
2. The Purchaser shall be in default ten days after the due date pursuant to clause 1.
3. If the payment deadline is exceeded or in case of default, SteelWall will charge interest in the amount of 9 percentage points above the prime interest rate of the European Central Bank, unless higher interest rates have been stipulated. SteelWall reserves the right to claim further damages caused by default.
4. If, after conclusion of the contract, it becomes apparent that SteelWall's claim for payment is endangered by the Purchaser's inability to pay, or if the Purchaser defaults on payment of a substantial amount, or if other circumstances arise which indicate a substantial deterioration in the Purchaser's ability to pay after conclusion of the contract, SteelWall shall be entitled to the rights under § 321 BGB (German Civil Code) (Defense of Uncertainty). SteelWall is then also entitled to demand payment of all outstanding accounts receivable not subject to the statute of limitations from the current business relationship with the Purchaser.
5. The Purchaser is only entitled to the right of retention and the right to set-off to the extent that its counterclaims are undisputed or determined to be legally binding by a court of law.
6. If shipment or transport from the shipping office cannot take place due to missing instructions or documents, or if delivery is delayed for other reasons beyond SteelWall's control, the full invoiced amount shall be due 15 days after issuance of the invoice. In cases where a letter of credit has been opened, the Purchaser is obliged to amend the letter of credit terms accordingly.

## **V. Execution of deliveries, delivery terms and dates**

1. SteelWall's delivery obligation is subject to correct and punctual delivery to SteelWall, unless SteelWall is at fault for the incorrect or delayed delivery to SteelWall.
2. Information on delivery times is approximate. Delivery periods shall commence on the date of the order confirmation by SteelWall and shall only apply on the condition that all details of the order are clarified in due time and that all obligations of the Purchaser are fulfilled in due time, such as providing all official certificates, letters of credit and guarantees or making down payments.
3. The date of dispatch ex works or ex warehouse is decisive for compliance with delivery terms and dates. They shall be deemed to have been complied with upon notification of readiness for dispatch or collection, if the goods cannot be dispatched on time through no fault of SteelWall.
4. Occurrences of force majeure entitle SteelWall to postpone delivery for the duration of the hindrance and a reasonable preparatory period. This shall also apply if such events occur during an existing delay. Force majeure includes
  - Monetary, trade and other sovereign measures,
  - Strikes, lockouts,
  - operational disruptions for which SteelWall is not responsible (e.g., fire, machinery and roller breakdown, shortages of raw materials and energy),
  - Obstruction of transportation routes,
  - Delay in import/export/customs clearance,
  - Disruptions in the means of transport (truck, train, ship, plane),
  - Disturbances during loading,
  - As well as all other circumstances which, through no fault on the part of SteelWall, make deliveries and services significantly more difficult or impossible.

It is irrelevant whether these circumstances occur at SteelWall or at a sub-supplier.

## **VI. Retention of title**

1. All delivered goods shall remain the property of SteelWall (goods subject to retention of title) until all claims have been fulfilled, in particular also the respective balance claims to which SteelWall is entitled (retention of title until all outstanding accounts have been paid) and the claims which are unilaterally established by the insolvency administrator by way of choice of fulfillment. This shall also apply to conditional claims arising in the future, e.g., from a change of drawees, and also if payments are made on specifically designated claims. This retention of title finally expires upon settlement of all claims covered by this retention of title that are still outstanding at the time of payment.
2. Machining and manufacturing of the goods subject to retention of title shall be carried out for SteelWall as manufacturer in terms of § 950 BGB (German Civil Code) without obligating SteelWall. The machined and manufactured goods shall be deemed to be goods subject to retention of title within the meaning of clause 1. In the event of machining, connecting and combining of the goods subject to retention of title with other goods by the Purchaser,

SteelWall is entitled to co-ownership of the new item in proportion of the invoice value of the goods subject to retention of title to the invoice value of the other goods utilized. If SteelWall's ownership expires due to connecting or combining, the Purchaser shall hereby now transfer to SteelWall the property rights to the new stock or item to which SteelWall is entitled to the extent of the invoice value of the goods subject to retention of title and shall hold them in custody for SteelWall free of charge. SteelWall hereby accepts the transfer. SteelWall's co-ownership rights are deemed to be goods subject to retention of title in terms of clause 1.

3. The Purchaser may only sell the goods subject to retention of title in the ordinary course of business under its normal business terms and conditions, as long as it is not in default, provided that the claims arising from the resale pursuant to clauses 4 to 6 are transferred to SteelWall. The Purchaser is not entitled to dispose of the goods subject to retention of title in any other way.
4. The claims arising from the resale of the goods subject to retention of title are hereby now assigned to SteelWall, together with all securities which the purchaser acquires for the claim. SteelWall hereby accepts the assignment. The claims shall serve as security to the same extent as the goods subject to retention of title. If the goods subject to retention of title are sold by the Purchaser together with other goods not sold by SteelWall, the claim from the resale shall be assigned to SteelWall in the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other goods sold. In the event of the sale of goods to which SteelWall has co-ownership shares in accordance with clause 2, a part corresponding to its co-ownership share shall be assigned to SteelWall. If the goods subject to retention of title are used by the Purchaser for performance of a contract for services, the claim arising from the contract for services shall be assigned to SteelWall in advance to the same extent.
5. The Purchaser is entitled to collect claims from the resale. This authorization to collect shall expire in the event of revocation by SteelWall, but at the latest in the event of default on payment, non-redemption of a bill of exchange or application for the opening of insolvency proceedings. SteelWall shall only exercise its right of revocation if it becomes apparent after conclusion of the contract that its claim for payment under this or other contracts with the Purchaser is endangered by the Purchaser's inability to pay. Upon request by SteelWall, the Purchaser is obliged to inform his customers immediately of the assignment to SteelWall and to provide SteelWall with the documents required for collection.
6. The Purchaser must immediately inform SteelWall of any distraint or other impairments by third parties. The Purchaser shall bear all costs incurred for the cancellation of the seizure or for the return transport of the goods subject to retention of title, insofar as third parties do not reimburse these.
7. If the Purchaser is in default or does not honor a bill of exchange when due, SteelWall is entitled to prohibit further processing, to take back the goods subject to retention of title and, if necessary, to enter the Purchaser's premises for this purpose and to sell the goods subject to retention of title at the best possible price and offset these amounts against the purchase price. The same shall apply if, after conclusion of the contract, it becomes apparent that SteelWall's claim for payment under this or other contracts with the Purchaser is at risk. Repossession does not constitute withdrawal from the contract. Regulations of the Insolvency Code shall remain unaffected.
8. If the invoice value of the existing securities exceeds the secured claims, including ancillary

claims (e.g., interest, costs), by more than 50% in total, SteelWall is obligated to release securities of SteelWall's choice at the Purchaser's request.

## **VII. Grades, dimensions and weights**

1. Grades, types and dimensions of the goods are determined in accordance with the DIN and EN standards agreed upon at the time of conclusion of the contract or, in the absence of such agreement, according to commercial practice. References to standards, material specs or factory test certificates, as well as information on grades, dimensions, weights and usability, do not constitute quality descriptions, assurances or guarantees, nor do they constitute declarations of conformity, manufacturer's declarations and corresponding conformity marks such as CE and GS.
2. Regarding the use of the goods sold, SteelWall refers to the EN 12063 standard. The Purchaser must comply with this standard. SteelWall is not liable for any damages caused by non-compliance with this standard.

## **VIII. Acceptances**

1. If an acceptance has been agreed upon, this can only take place in the SteelWall supplier plant or warehouse immediately after notification of readiness for acceptance. The personal acceptance costs shall be borne by the Purchaser, the material acceptance costs shall be charged to the Purchaser according to SteelWall's price list or the price list of the respective exhibitor (supplier plant).
2. If the acceptance is not carried out, not carried out in time or not carried out completely through no fault on the part of SteelWall, SteelWall is entitled to dispatch the goods without acceptance or to store and invoice the goods at the expense and risk of the Purchaser.
3. If the service is based on a contract for services, the acceptance shall be deemed to have been granted three days after declaration of readiness for acceptance. If commencement of operations takes place before the declaration of readiness for acceptance or before expiry of the three-day period, the acceptance shall be deemed to have been granted upon commencement of operations.

## **IX. Shipment, transfer of risk, packaging, partial delivery**

1. SteelWall determines the shipping route and means of shipment, as well as the carrier and freight forwarder.
2. Goods reported ready for shipment in accordance with the contract must be called immediately; otherwise, after issuing a reminder, SteelWall is entitled to ship them at the expense and risk of the Purchaser or to store them at SteelWall's discretion and to invoice them immediately.
3. If, through no fault on the part of SteelWall, transport by the intended route or to the intended place within the intended time period becomes impossible, SteelWall is entitled to deliver by

another route or to another place; the additional costs incurred shall be borne by the Purchaser. The Purchaser shall be given the opportunity to comment beforehand.

4. When the goods are handed over to a carrier or freight forwarder, however, at the latest when the goods leave the warehouse or the supplier plant, the risk, including the risk of seizure of the goods, shall pass to the Purchaser in all transactions, also in the case of deliveries free of charge and carriage-paid deliveries.
5. In the case of carriage-paid and free deliveries, SteelWall will only provide insurance upon instructions from and at the expense of the Purchaser. The obligation and costs of unloading shall be borne by the Purchaser. The goods must be unloaded without delay, otherwise the Purchaser shall bear any resulting costs, in particular for idle times.
6. SteelWall is entitled to make partial deliveries to a reasonable extent. SteelWall is also entitled to reasonably exceed or fall short of the agreed delivery quantities. The specification of an "approximate" quantity entitles SteelWall to an excess/shortfall and corresponding calculation of up to 10%.

#### **X. Call-off orders (continuous deliveries)**

1. In the case of contracts with continuous delivery, SteelWall shall be given call-offs and grade classifications for approximately equal monthly quantities; otherwise, SteelWall is entitled to make the classifications itself at its reasonable discretion.
2. If the individual call-offs exceed the contractual quantity in total, SteelWall is entitled but not obliged to deliver the excess quantity. SteelWall may charge for the excess quantity at the prices that are valid at the time of the call-off or delivery.
3. In the case of call-off orders, goods reported ready for shipment must be called immediately, otherwise, after issuing a reminder, SteelWall is entitled to ship the goods at the expense and risk of the Purchaser or to store the goods at its discretion and to invoice them immediately.

#### **XI. Liability for material defects**

1. Material defects of the goods are to be determined upon handover and recorded in writing with proof in the form of photographs. Material defects that cannot be discovered upon handover even after careful inspection must be reported in writing immediately after discovery, at the latest before expiry of the agreed or statutory limitation period, and any processing or machining should cease immediately.
2. In case of a justified notice of defects in due time, SteelWall may choose to remedy the defects or deliver goods free of defects (subsequent performance). In the event of failure or refusal of subsequent performance, the Purchaser may withdraw from the contract or reduce the purchase price after unsuccessful expiry of a reasonable period. If the defect is not substantial or if the goods have already been resold, processed or transformed, the Purchaser is only entitled to a reduction in price.
3. SteelWall shall bear expenses in connection with the supplementary performance according to

clause 2 only insofar as they are reasonable in the individual case, in particular in relation to the purchase price of the goods, but in no case more than 150 % of the purchase price. Further expenses, e.g., in connection with the installation and removal of the defective goods, shall only be borne by SteelWall in accordance with section XII of these Terms and Conditions. SteelWall is not liable for expenses incurred because the goods sold have been transported to a place other than the agreed place of performance, unless this is in accordance with their contractual use.

4. After the Purchaser accepts the goods as agreed, the notification of defects which were detectable during the agreed type of acceptance shall be excluded. If a defect has remained known to the Purchaser as a result of negligence, the Purchaser may only assert rights due to this defect if SteelWall has fraudulently concealed the defect or has assumed a guarantee for the quality of the item.
5. If the Purchaser does not immediately give SteelWall the opportunity to assure itself of the defect, in particular, if the Purchaser does not immediately make goods complained of or samples thereof available for testing purposes upon request, all rights related to the material defects shall lapse.
6. In the case of goods sold as declassified (e.g., so-called II-A material) and/or used material, the Purchaser is not entitled to any rights arising from material defects with regard to the specified reasons for declassification. In case of sale of declassified and/or used material, Steelwall's liability for material defects is excluded.

## **XII. General limitation of liability and statute of limitations**

1. SteelWall is only liable for breach of contractual and non-contractual obligations, in particular for impossibility, delay, culpa in contrahendo and tort – also for its executive employees and other vicarious agents – in cases of intent and gross negligence, limited to the typical contractual damages foreseeable at the time of conclusion of the contract. In all other respects, SteelWall's liability, including liability for damages caused by defects and consequential damages, is excluded.
2. These limitations do not apply in case of culpable violation of essential contractual obligations, insofar as the achievement of the purpose of the contract is endangered, in case of loss of life, bodily injury and damage to health due to culpability, and also not if and insofar as SteelWall has fraudulently concealed defects of the item sold or has guaranteed the quality of the sold item, as well as in cases of mandatory liability according to the Product Liability Act.
3. Unless otherwise stipulated, contractual claims of the Purchaser against SteelWall arising from and in connection with the delivery of the goods shall become statute-barred one year after delivery of the goods. This deadline also applies to such goods used in their usual manner for a construction and which have caused its defectiveness, unless this manner of use has been agreed upon in writing. This shall not affect SteelWall's liability for intentional and grossly negligent breaches of duty, loss of life, bodily injury and damage to health due to culpability and the expiration of the statute of limitations for claims under a right of recourse.

## **XIII. Place of performance, place of jurisdiction and applicable law**

1. The place of performance for the services of SteelWall shall be the delivery plant in the case of delivery ex works and the warehouse in the case of all other deliveries.
2. The exclusive place of jurisdiction for all legal disputes is Munich.
3. All legal relations between SteelWall and the Purchaser shall be governed by the law applicable at the registered office of SteelWall, in addition to these Terms and Conditions. The provisions of the UN Convention on Contracts for the International Sale of Goods ((Vienna, April 11, 1980) (CISG)) shall not apply.

**XIV. Other (proof of export, VAT (EU))**

1. If a purchaser who is domiciled outside the Federal Republic of Germany (extra-territorial purchaser) or his agent collects goods or transports or dispatches them to the external territory, the Purchaser shall provide SteelWall with the export certificate required for tax purposes. If this proof is not provided, the Purchaser shall pay the VAT rate applicable to deliveries within the Federal Republic of Germany from the invoiced amount.
2. For deliveries from the Federal Republic of Germany to other EU member states, the Purchaser must notify SteelWall prior to delivery of the VAT identification number under which the Purchaser performs the VAT tax within the EU. Otherwise, the Purchaser must pay the VAT amount legally owed by SteelWall for deliveries from SteelWall, in addition to the stipulated purchase price.
3. For each tax-exempt, intra-Community delivery from the Federal Republic of Germany to another EU member state, the Purchaser of the goods is obliged, in accordance with §§ 17a,17 c of the Turnover Tax Implementing Regulation (UStDV), to immediately provide SteelWall with proof of the actual arrival of the goods (confirmation of arrival). The proof shall be provided by a copy of the waybill with signature, place and date of receipt. If this proof is not provided, the Purchaser must pay the tax rate applicable to deliveries within the Republic of Germany in relation to the previous (net) invoice amount, no later than in the month following the collection.

**XV. Final provisions, severability clause**

1. The Purchaser may not assign its claims against SteelWall to third parties without the written consent of SteelWall.
2. Amendments and supplements to contractual agreements, as well as collateral agreements, between SteelWall and the Purchaser must be made in writing. This shall also apply to any amendment of this written form requirement.
3. If any provision of this contract is invalid in whole or in part, this shall not affect the validity of the remaining provisions of this contract. In this case, the parties undertake to replace the ineffective provision with an effective provision that comes closest to the economic purpose of the ineffective provision.

-----