

## **SPECIAL TERMS AND CONDITIONS OF SALE AND DELIVERY for the STEEL division of**

ALUKÖNIGSTAHL GmbH, Goldschlagstraße 87-89, A-1150 Vienna

### **1. Scope**

**1.1** These Special Terms and Conditions of Sale and Delivery (hereinafter referred to as "STC Steel") shall apply in the sector of steel trading and prefabrication/processing. Supplementing these STC Steel, our General Terms and Conditions of Sale and Delivery, as from time to time amended (hereinafter referred to as "GTC"), shall also apply. If any of the terms in our STC Steel conflict with those in our GTC, the STC Steel shall take precedence. Terms and conditions of the Purchaser which depart from or conflict with our STC Steel shall only be valid if we expressly consent to them in writing. Our STC Steel shall apply even where we deliver goods/render performance without reservation of rights and are aware of terms and conditions of the Purchaser which depart from or conflict with our STC Steel.

**1.2** In cases of continuous business relationships, our STC Steel shall also apply to future transactions in which we do not expressly refer to them, provided that they have been received by the Purchaser under a previous contract or order confirmed by us.

**1.3** In the event of any legal invalidity or unenforceability of individual items of these Special Terms and Conditions, the remaining terms and conditions and the contracts made on their basis shall remain valid/enforceable. In lieu of the invalid or unenforceable term, the parties shall agree such valid or enforceable term as comes the closest to the meaning and purpose of the invalid or unenforceable term.

### **2. Prices**

Our prices and our other offers and bids are without obligation on our part. Unless expressly otherwise agreed, our prices are quoted on an *ex works* basis, net of VAT, and do not include shipping charges or any incidental services. All additional expenses such as packaging, loading, customs clearance, insurance charges, duties and taxes shall be borne by the Purchaser. Any bonuses or cash discounts granted shall apply only to the specific goods delivered/performance rendered and shall not apply to subsequent contracts even if we do not object to deductions made by the Purchaser. If payments are not made, or not made in full, when due (particularly in cases involving the insolvency of the Purchaser), we shall be entitled to demand payment and assert claims for the full price, without regard to any bonuses or cash discounts which may have been granted.

### **3. Cancellation/Rescission**

In all cases in which the Purchaser resciles from or cancels the contract after we have commenced rendering our services/performance, we shall be entitled, at our option, to charge the Purchaser a lump sum of liquidated damages equal to 40% of the gross contract amount (without the need to prove damages) or to claim our actual losses (including lost profits).

### **4. Certificates**

Relevant confirmations and certificates from the manufacturer of the materials for processing will be provided together with the shipment if this is expressly requested in the Purchaser's order. However, we shall only be liable to assure that the confirmations and certificates refer to the goods being supplied. We shall bear no liability for the content or the correctness of the documents issued by the manufacturer.

### **5. Risk in cases of materials provided by the Purchaser**

Where the Purchaser has provided us with materials for processing, the Purchaser shall bear the risk of accidental loss or other unserviceability thereof. If we or our subcontractors have already commenced to render services at the time of any loss of such materials, we shall be entitled to charge the Purchaser for such services we may have already provided.

### **6. Warranty and damages**

**6.1** Except in cases involving personal injury, we shall only be liable for breaches of any duties of inspection or warning where our liability is based on intentional acts or omissions or serious gross negligence. The foregoing also applies in respect of any possible duties of inspection or warning in the course of preparing an offer or an alternative offer.

**6.2** We do not examine or check the specifications, plans, drawings, etc. provided to us in the course of our preparation of an offer. The Purchaser is deemed to warrant the correctness and completeness of documents and specifications provided to us, where the incorrectness thereof is not obvious. We shall bear no liability for assuring that the goods are fit for the purpose intended by the Purchaser. We likewise disclaim liability for defects of the end product(s) which are attributable to incorrect/incomplete documents and specifications given by the Purchaser or for additional costs due to such incorrect or incomplete documents or specifications. Our responsibility is limited solely to executing such specifications in line with the Purchaser's plans and specifications. In particular, we do not review any potential interfaces between the goods we are instructed to produce and other parts, or their ability to function as a part of a larger unit or system.

**6.3** In the event of manifestly deficient documents and/or specifications, we shall notify the Purchaser without delay and seek instructions from the Purchaser. The Purchaser must provide such instructions within 5 business days and/or forward corrected documents/specifications to us. Where the Purchaser fails to discharge this duty, we shall be entitled to rescile from the contract and to invoice the Purchaser for the goods and services rendered up to that point. In addition, the Purchaser shall be liable for the consequences of default arising therefrom.

**6.4** Where the goods and/or services requested/specified by the Purchaser cannot be rendered or cannot be completely rendered for technical or similar reasons, to the extent it is possible for us to do so we shall submit an alternative offer to the Purchaser which comes as close as possible to the design or performance desired by the Purchaser. The Purchaser shall be obliged to carry out or have others carry out checks to verify the suitability of such alternative offer for its intended use before accepting the alternative offer. We shall bear no liability for ensuring that the goods produced in line with the alternative offer are fit for the use intended by the Purchaser and shall be liable only to ensure that they are produced in accordance with the plan/s and specifications as stated in the alternative offer.

**6.5** Where the order contains no specific instructions regarding technical specifications, quality and quantity of the goods, we shall be deemed to warrant that the goods shall be of such quality as is customary for goods of the same kind at the place of production (i.e. that they are of the quality of usual commercial goods) and as the customer may expect. We shall bear no liability for any specific quality requirements going beyond this.

**6.6** Where the transaction is not a consumer transaction, slight changes to our obligations in respect of the goods or services to be supplied, or other changes which are reasonable to the Purchaser, shall be deemed approved in advance. The foregoing shall apply in particular to deviations from instructions or specifications, which result from the nature of the goods or services. Deviations in respect of dimensions, weights, surface characteristics and other quality features are permitted within the scope of the agreed and/or applicable norms and standards such as EN, DIN, ÖNORM, etc. or currently valid trade usages. Where calculated weights apply, a surcharge in the customary amount will be charged in respect of rolling tolerances and the like.

**6.7** In cases involving the provision of materials/substances by the Purchaser, we shall bear no liability for defects of the end product if their source lies in defective materials or other quality defects, etc. Materials (supplied by the Purchaser) are not encompassed by our warranty and shall not give rise to any claims for damages.