

# General Terms and Conditions of Sale and Delivery of Steeldesign GmbH

Last updated: December 2015

## 1. Scope of application

Unless expressly agreed otherwise, the following terms and condition of sale and delivery shall apply exclusively for all offers and deliveries of Steeldesign GmbH. Differing terms shall not form part of the contract except if expressly agreed in writing. In addition, conflicting terms shall not apply, even if we do not expressly object to them.

## 2. Offers and conclusion of contract, amendments/supplements to the contract

2.1 All offers of Steeldesign GmbH are subject to change. A contract is concluded if Steeldesign GmbH accepts an order of the customer within four weeks by written order confirmation or by delivery. The content of the contract, in particular the scope of delivery, shall be defined by the order confirmation of Steeldesign GmbH.

2.2 Amendments and/or supplements to the contract shall be done in writing or confirmed by Steeldesign GmbH in writing.

2.3 Employees and other agents of Steel Design GmbH are — in the absence of a statutory authority — not entitled or authorised to conclude oral agreements beyond the scope of the contractual terms fixed in writing.

## 3. Terms for delivery and delivery delays

3.1 Delivery dates / shipping dates and delivery periods, which may be agreed to be binding or non-binding, must be specified in the written statement of acceptance/order confirmation. Delivery terms commence upon the conclusion of the contract. If the technical details of delivery have not yet been established at this stage, the delivery term only commences upon full and final clarification of these technical details. If contractual amendments are agreed at a later stage, a new delivery date or period shall be agreed if necessary.

3.2 If industrial action at Steeldesign GmbH or its suppliers, *force majeure* or similar events that are not part of the operational risk of Steeldesign and temporarily prevent Steeldesign GmbH, despite reasonable care, to meet the agreed delivery schedule, delivery dates and delivery periods will be postponed by the time that the impossibility of performance lasts. Steeldesign GmbH shall inform the customer of the delivery obstacle without undue delay after becoming aware of it.

3.3 Moreover, a delivery term is extended by the period in which the customer is in default of his obligations. Any further rights of Steeldesign remain unaffected.

3.4 The delivery date is also extended by the period in which Steeldesign GmbH, despite careful selection of its suppliers is not supplied properly or not in time by the latter and is for this reason not able to meet the delivery schedule, provided the failure to deliver is beyond the control of Steeldesign. Steeldesign is prepared to assign its claims against its supplier in connection with the failure to supply to the customer. In addition, Steeldesign is obliged to inform the contracting partner without undue delay about the non-availability.

3.5 Three weeks after expiry of a non-binding delivery date or period, the customer may require Steeldesign GmbH to deliver. Steeldesign GmbH is placed in default upon receipt of the request for delivery. Despite the receipt of a request for delivery, Steeldesign GmbH will not be in default, if the delay is beyond its control.

3.6 If Steeldesign GmbH is in default, the customer may, without prejudice to its other rights, request compensation for the damage caused by the delay. In the event of slight negligence on the part of Steeldesign GmbH, this claim is limited to 8 % of the agreed price.

3.7 In addition to the compensation of damage claimed under Section 3.6, the customer may claim damages instead of performance in accordance with the statutory provisions. In this connection, two weeks are deemed to be a reasonable period of grace. In the event of slight negligence on the part of Steeldesign GmbH, this claim is limited to 8 % of the agreed price. The right of Steeldesign GmbH to claim the return of any performance delivered remains unaffected.

3.8 If Steeldesign GmbH, while being in default, is rendered incapable of performance for reasons beyond its control, Steeldesign GmbH shall be liable subject to the limitations of liability pursuant to Sections 3.6 and 3.7.

3.9 The customer's statutory right of cancellation for non-performance is not affected by the above. If the customer is required under these provisions to take a reasonable period of grace before exercising his right of cancellation, a period of two weeks shall be deemed to be reasonable.

## 4. Pricing

4.1 Purchase prices include delivery ex works, excluding packaging and transportation costs. Steeldesign GmbH shall charge 2 % packaging costs for all items; any agreed additional services shall be charged separately. In the event of a contract value below EUR 150.00, Steeldesign GmbH reserves the right to charge a small quantities surcharge of EUR 15.00 as well as a fixed freight and packaging fee of EUR 10.00. All prices stated are exclusive of the applicable value-added tax.

4.2 In the event of a change in wage and material costs, freight rates, energy costs, value-added tax and customs duties, Steeldesign GmbH reserves the right to demand a corresponding reasonable adjustment of the agreed price, unless delivery takes place within four months after conclusion of the contract

or if a fixed price has been agreed. The same applies in the event of cost increases due to performance delays that are beyond the control of Steeldesign GmbH, as well as in the case of fluctuations in an agreed foreign currency or in the exchange rate to the EUR. In the cases referred to above, no price adjustment may be requested if the circumstances leading to an increase in the prices occur while Steeldesign GmbH is in default and if the goods have already been delivered. Under appropriate circumstances, and subject to the matching limitations, the customer shall be entitled to a price adjustment corresponding to the right of Steeldesign. If the customer is an entrepreneur, the prices shall be adjusted automatically in the event of a change in the rate of value-added tax after conclusion of the contract. The right of cancellation referred to in the preceding subsection shall not apply in the event of a price increase.

4.3 As a matter of principle, Steeldesign GmbH reserves the right to charge a material price surcharge for all materials. This surcharge is charged for the goods and is indicated separately in the offer or order. In the event of orders under a master contract, the price basis shall be confirmed in the order, and the term of application/price maintenance shall be indicated accordingly.

4.4 If the customer requires subsequent changes to the ordered goods, in particular after approval of the CAD construction data by the customer, Steeldesign GmbH reserves the right to charge the incurred construction costs at the current full rate to the customer.

## 5. Maturity, payment, late payments

5.1 Purchase prices and prices for other services will be due for payment 30 days after delivery of the goods or performance and receipt of the invoice. If payment is not made within another 14 days after the date of maturity as referred to above, the customer will be in default. If the customer is a consumer, the maturity and default provisions shall only apply if express reference was made to these legal consequences in the invoice or payment statement. If payment is made within 14 days after delivery of goods, Steeldesign GmbH grants a 2% early payment discount.

5.2 For dunning notes during default, Steeldesign GmbH will charge a dunning fee of EUR 10.00.

5.3 For first-time deliveries, we may make delivery contingent on advance payment. Upon expiry of the due date for payment, we shall be entitled to charge default interest pursuant to Section 288 of the German Civil Code (BGB) at the rate of 8 % per annum above the base rate.

5.4 Steeldesign GmbH will only accept bills of exchange, cheques and other payment orders if so agreed and only on account of payment, subject to the proviso that the instruments can be discounted. Discounting costs will be charged by Steeldesign GmbH from the date of maturity of the invoice amount. Collection costs, bank interest and bank costs shall be paid by the customer.

5.5 If partial payments of Steeldesign GmbH have been agreed or if Steeldesign GmbH is entitled pursuant to Section 6.6 to provide part performance, Steeldesign GmbH may require a part payment corresponding to the part performance.

5.6 If payment in instalments has been agreed, the entire residual amount — irrespective of the date of maturity of any bills of exchange — including any agreed interest accumulated up to the date of maturity, will become due if the customer is late in whole or in part in paying two consecutive instalments — if payment intervals of more than one month have been agreed, if the customer is late in paying one instalment by 14 days — and by at least 10%, respectively 5 % (in the case of a loan with a term of three years) of the instalment amount. The remainder of the amount will also become due if the buyer generally ceases to meet his payment obligations or if insolvency proceedings are commenced in regard to the assets of the buyer.

5.7 The customer shall not be entitled to offset claims of Steeldesign GmbH with counterclaims, unless the counterclaim is undisputed or confirmed in a judgment with final and binding effect. The same applies in regard to the exercise of a right of retention based on counterclaims, in particular for claims from earlier or other transactions between the parties.

5.8 The customer may not offset any counterclaims against claims made by Steeldesign GmbH, unless the counterclaim is undisputed or has been established in law. The same shall apply to the exercising of a right of retention with respect to counterclaims, in particular from previous or other business transactions of the Terms and Conditions of Business.

## 6. Delivery, shipping, transfer of risk, storage costs

6.1 Steeldesign GmbH expressly reserves the right of technical changes — deviating from the specifications of dimensions, weights and capacities as well as illustrations made in the declaration of acceptance or confirmation — for the purpose of improvement.

6.2 If Steeldesign GmbH ships the ordered goods at the request of a customer, who is an entrepreneur, to another location than the place of performance, the risk shall also pass to the customer as soon as Steeldesign GmbH hands over the goods to the carrier, freight forwarder or other person or institution commissioned to carry out the shipment if the shipment is made from another location than the place of performance and if this is done for the benefit of the customer. Shipping from another location than the place of

performance is deemed to be for the benefit of the customer if the customer has requested shipping from another location than the place of performance.

6.3 If the shipment of the goods is delayed at the request of the customer, Steeldesign GmbH is entitled to store the goods itself at the expense and risk of the customer or store the goods in a freight forwarding storage or warehouse of a third party. The same applies if shipping is impossible for an extended period of time for reasons beyond the control of Steeldesign GmbH.

6.4 If Steeldesign GmbH is obliged by its duty of care to conclude a transport insurance for the goods to be delivered by agreement at the premises of the customer, or if the customer requests an insurance, the customer shall pay the costs of the insurance.

If the customer so wishes in the event of sales shipment, Steeldesign GmbH will cover the delivery by transport insurance, the costs of which shall be paid by the customer. The customer is obliged to report any complaints to the transport company and notify Steeldesign GmbH accordingly.

6.5 Steeldesign GmbH will not take back any transport packaging or other packaging in accordance with the Packaging Regulation. The customer is obliged to arrange for the disposal of the packaging at his own expense.

6.6 Steeldesign GmbH is entitled to make part deliveries of the total order within the delivery period, provided the customer can be reasonably expected to accept such part deliveries in view of the object of the performance and its typical use.

6.7 Steeldesign GmbH reserves the right to cancel the contract if it has concluded a congruent hedging transaction to meet its performance obligations under the contract with the customer, and if the contracting partner of this hedging transaction has failed to deliver. The right of cancellation is excluded if the supplier's failure to deliver is within the sphere of responsibility of Steeldesign GmbH or in the case of an obligation in kind. Steeldesign GmbH is obliged to inform the customer without undue delay about the non-availability of the goods and return the consideration of the customer without undue delay.

If the customer is an entrepreneur, Steeldesign shall have a right of cancellation subject to the conditions stated above, even if the upstream supplier does not meet his obligations under agreements that do not constitute hedging transactions.

## 7. Retention of title

7.1 If the customer is an entrepreneur, Steeldesign GmbH retains title to the movable goods sold by it until full settlement of all claims, including future claims, resulting from the business relations with the customer. If Steeldesign and the customer have a current account, Steeldesign GmbH retains title to the goods sold until payment of the claims from an acknowledged credit balance from a current account.

In all other respects, Steeldesign GmbH retains title to the movable goods sold by it until full settlement of the purchase price, including all incidental claims. In the case of bills of exchange and cheques, only the redemption of the instrument shall constitute payment; in the case of cheque/bills of exchange payments (rediscounted bills of exchange) our retention of title remains in force irrespective of the cheque payment until the bill of exchange is redeemed.

7.2 If the customer is an entrepreneur, the customer may resell of the goods subject to retention of title in the ordinary course of business; the customer assigns already now all claims obtained against his buyers or third parties from the resale of the goods, irrespective of whether the goods are resold with or without further processing at an amount equivalent to the amount owed to Steeldesign GmbH. If the customer includes the claim into a current account with his contracting partner, he assigns already now his claims based on the final credit balance to Steeldesign GmbH. If the goods subject to retention of title are sold with other goods, the advance assignment is limited to the amount of the value of the goods subject to retention of title. The customer remains entitled to collect the assigned claims. Steeldesign GmbH may revoke the authorisation to resell the goods and to collect the assigned claims if the customer does not meet his payment obligations from the collected proceeds, is in payment default, bankruptcy, settlement or if an application for bankruptcy, settlement or insolvency proceedings has been filed in regard to the assets of the customer or if the customer has generally suspended payments. In this case, the customer is obliged, upon revocation of the authorisation and upon request of Steeldesign GmbH, to report the assigned claims and the debtors of such claims to Steeldesign GmbH, to inform such debtors of the assignment, and to transmit all information and documentation required to collect the claims to Steeldesign GmbH.

7.3 As long as the retention of title is effective, any sale that does not fall within the scope of Section 7.2, any pledging, transfer by way of security, lease or other disposal or change that may impair the security interests of Steeldesign GmbH of the goods delivered subject to retention of title is only permitted with the prior written consent of Steeldesign GmbH.

7.4. The customer shall inform Steeldesign without undue delay of any legal or actual interference of third parties with the goods subject to retention of title or the claims assigned in advance, shall transmit at the same time all necessary documentation for the intervention and shall inform the third party without undue delay of the retention of title by Steeldesign GmbH.

7.5 The customer is obliged to handle the goods delivered by Steeldesign GmbH subject to retention of title with the customary care and shall maintain the goods at the customer's expense. If the customer violates this duty, Steeldesign GmbH is entitled to cancel the contract.

7.6 Steeldesign GmbH retains all rights, in particular ownership, copyright and similar rights, in technical drawings, assembly instructions and other documents that are included in the delivery to the customer or are handed to

the customer in any other way; such rights are not transferred to the customer. The customer may not transmit such documents to third parties.

## 8. Warranty, limitation period, guarantees, cancellation

8.1 The customer shall check the fitness for use of the goods himself; if the conclusion of the contract is for both parties a commercial transaction, Section 377 of the German Commercial Code (HGB) applies.

The customer shall report any evident defects without undue delay however, not later than one week after receipt of the goods, to Steeldesign GmbH. Any other defects that cannot be detected within in this time-limit even despite careful inspection shall be reported without undue delay after detection.

8.2 In the event of a defect of lack of warranted characteristics, the customer shall be entitled to cure (*Nacherfüllung*). If a cure is impossible or fails, the customer may request a reasonable reduction of the price.

To the extent permitted by law, all further rights of the customer under the warranty, in particular the right of cancellation and compensation of damage of any kind, including damage that does not occur on the actual goods delivered, are excluded, provided the damage was not caused by gross negligence or intent.

In the event of gross negligence, the compensation of damage is limited to the damage foreseeable at the time of conclusion of the contract.

8.3 Reasonable deviations in form, dimension, colour or properties of the material are contract-compliant and do not constitute a defect.

8.4 The statutory provisions for the limitation of claims shall apply.

8.5 If no time-limit has been agreed for the contractual right of cancellation of the customer, and if Steeldesign GmbH is entitled to set a time-limit, a time-limit of two weeks is deemed to be reasonable.

8.6 If the customer cancels the contract before or upon performance of the commissioned works, the customer is obliged to pay to Steeldesign GmbH an amount equivalent to 40 % of the contract amount, respectively the residual amount for the commissioned works not yet completed.

In addition, part performances already delivered shall be payable in full. The customer remains entitled to provide proof that Steeldesign GmbH has not suffered any damage or substantially less damage than the flat rate compensation as a result of the cancellation.

## 9. Liability

9.1 Liability for culpable acts committed by persons used by Steeldesign GmbH to perform its obligations — including liability for gross negligence or intent — is excluded. In the event of culpable acts by Steeldesign GmbH or its authorised representatives, delictual liability is limited to gross negligence or intent; for other forms of culpable act, this group of persons shall only be liable for contractual damage, subject to a limitation of direct damage to EUR 10,000.00.

9.2 In the event of claims asserted against Steeldesign GmbH for impossibility of performance, subsection (1) shall apply with the necessary modifications, subject to the proviso that the exclusion of liability for grossly negligent or intentional acts of persons used by Steeldesign GmbH to perform its obligations shall not apply.

## 10. Legal relations, place of performance and place of jurisdiction

10.1 The contractual relations of the parties shall be governed exclusively by the law of the Federal Republic of Germany. Application of the UN Convention on Contracts for the International Sale of Goods is excluded.

10.2 Unless expressly agreed otherwise, the place of performance shall be the registered office of Steeldesign GmbH in Troisdorf.

10.3 If the customer is an entrepreneur, a legal person under public law or a special fund under public law, the place of jurisdiction shall be the registered office of Steeldesign GmbH. In all other respects, the registered office of Steeldesign GmbH shall be the place of jurisdiction in the event that the customer relocates his place of residence or customary abode to a place outside the Federal Republic of Germany after conclusion of the contract or if the customer's place or residence or customary abode is unknown at the time of filing a claim.

## 11. Recording of data

We hereby inform you that we record and process your data — to the extent necessary for business purposes and permitted by the Federal Data Protection Act (Section 26 BDSG) — by means of electronic data processing.

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