

# Sales and Payment Terms (SPT) of Adolf Ellermann GmbH

## 1. Scope of application

1.1 Our sales and payment terms (SPT) are valid exclusively; conflicting provisions of our customers or provisions differing from our terms and conditions are not accepted, unless we have specifically agreed thereto in writing. Our sales and payment terms are also valid, if we deliver to customers without reservation, although we have knowledge of conflicting provisions of our customers or provisions differing from our own sales and payment terms.

1.2 Our terms and conditions are also valid for all future business with the customer.

## 2. Additions

2.1 For deliveries of ferrous scrap, the „Handelsüblichen Bedingungen für die Lieferung von unlegiertem Stahlschrott“ (General conditions regarding the deliveries of non alloyed steel scrap), issued by the Bundesvereinigung Deutscher Stahlrecycling- und Entsorgungsunternehmen e. V. (BDSV) are also valid in their respectively valid version (*Published on: <http://www.bdsv.org>*).

2.2 For deliveries of alloyed scrap, the „Handelsüblichen Bedingungen für die Lieferung von legiertem Eisen und Stahlschrott“ (General conditions regarding the deliveries of alloyed steel and ferrous scrap); for deliveries of cast iron scrap and cast steel scrap, the „Handelsüblichen Bedingungen für die Lieferung von Gussbruch und Giesseriestahlschrott“ (General conditions regarding the deliveries of cast iron scrap and cast steel scrap), both issued by BDSV, are also valid in their respectively valid version (*Both published on: <http://www.bdsv.org>*).

2.3 In the case of deliveries of non-ferrous metals, the „Usancen des Metallhandels“ (Practices of metal trading) set out by the Verband deutscher Metallhändler e.V. are also valid in their respectively valid version (*Published on: <http://www.metallhandel-online.com>*). For the interpretation of commercial terms, the official „INCOTERMS“ of the ICC are to be adhered to in their respectively valid form (*Published on: <http://www.icc.org>*).

2.4 In the case of conflicting regulations, our SPT precede the terms of these additional documents. The contents of the above mentioned additions are to be understood as known by the customer. We are prepared to inform the customer about the contents of these conditions upon demand of the customer.

## 3. Offer

3.1 Our offer remains non-committal and subject to change until the placing of an order. Orders based on our offer become binding only upon our written confirmation.

3.2 If the order has to be qualified as an offer according to § 145 BGB (German Civil Code), we may accept within two weeks time.

3.3 All order data such as images, sizes, weights or similar, are non-committal. Details about properties, type, design and samples of the goods, are merely indications of the quality of the goods.

## 4. Prices and payment terms

4.1 Our named prices are net prices plus freight and statutory VAT. The prices are based upon current freight rates at that time. The occurrence of or the increase of public dues and – in the case of carriage free delivery – the increase of freight rates, leads to an increase in the total price for the goods. When free carriage deliveries are agreed, the agreed price is valid only with normal unhindered transport methods.

4.2 With third-party deliveries, in particular ex works deliveries, when no fixed price has been formally agreed, we can establish the price based on the suppliers conditions on the day of delivery. All other costs, public declarations, customs charges – even when new or increased, freight rates and the increase thereof are to be met by the customer, unless compulsory legislation states otherwise.

4.3 In the case of deliveries to other EU member states, our customer is obliged to inform us prior to delivery of his VAT identification number that is used for the taxation of purchases within the EU. Otherwise the customer has to pay the relevant VAT amount that we owe the tax authorities additionally to the agreed price for the delivery.

4.4 Unless nothing to the contrary has been agreed, our invoices are due upon receipt without deduction (cash discount). Transactional costs are to be met by the customer.

4.5 In the case of a specific term of credit being agreed, the effective date for this and any interest to be calculated will be the date of invoice. Every order will be treated as a business within itself.

4.6 Despite differing stipulation from the customer, we are entitled to deduct payments first from their old debts. If costs or interest have already arisen, we are entitled to offset the payment first against these costs, then the interest and then for the principal service.

4.7 A payment is regarded as paid only when we have access to the sum paid. In the case that a payment is made by check, the payment is regarded as paid only when the check has irrevocably and without reserve been cashed.

4.8 Payment by draft requires a prior explicit agreement with us. All draft charges are to be met by the customer. The acceptance of a draft does not imply a respite (Stundung) of the account in question.

4.9 Cash payments can only be accepted if delivered to members of staff holding a written authority to collect payments.

4.10 Should the customer be in default with payment, interest of 8 percentage points above the respective Deutsche Bundesbank „Basiszinssatz“ (Base level) will be calculated from the point in time in which the default starts, unless the customer can substantiate lower damages. The right to assertion regarding further damages remains reserved.

4.11 If a customer does not fulfil its payment obligations, and in particular if checks cannot be cashed, if payments cease, if drafts become subject to protest, or if we become aware of any other circumstances that bring the creditworthiness of the customer into question, then we are entitled to regard the entire debt owed by the customer as due, even if checks have been accepted. We are also entitled to demand further security measures should we deem them to be necessary.

4.12 The customer is only entitled to offset, withhold or reduce payment, even if claims or complaints have been put forward, when their claims are legally binding, undisputed or acknowledged by us in writing.

## 5. Delivery times

5.1 Delivery times and appointments are only binding when explicitly agreed.

5.2 The compliance with delivery times requires the timely and correct fulfilment of the customer's duties. The objection of non-fulfilment of the contract remains reserved.

5.3 Should the customer be in default of acceptance, or be guilty of failing to complete other obligations, then we are entitled to demand that our resulting damages and any extra costs caused as a result of this are met by the customer. Further claims remain reserved.

5.4 If the requirements set out in No. 5.3 are met, from this point in time of the default or default of acceptance the risk of accidental destruction or accidental deterioration of the goods is entirely at the risk of the customer.

5.5 Administrative measures, traffic problems, delivery restrictions, strikes, effects of the weather, business disruptions without blame and other cases of force majeure which affect either our customers or ourselves can result in delivery times being adjusted accordingly. Should the disturbances continue for more than eight weeks, then both parties are entitled to withdraw (zurücktreten) from the contract.

## 6. Transfer of risk, shipping

6.1 When goods are passed on to a carrier or haulier, or at the latest when it leaves the stocking area, the risk – including the risk of confiscation – is then transferred to the customer. This is also the case when the transport is completed by one of our vicarious agents with respect to contractual or tortious liability (Erfüllungs- und Verrichtungsgehilfe).

6.2 Transport routes and methods, as well as the type of shipment, are to be determined by ourselves, unless otherwise stated in writing.

6.3 If the loading and transport of the goods is delayed for reasons for which the customer is responsible, we have the right to place the goods into storage and take all measures deemed necessary to preserve the goods at the cost of the customer and bill the goods as if delivered. The same applies when goods that have been notified as ready for collection are not collected within four days or more. The law regarding default of acceptance remains untouched.

## 7. Determination of weights & quantities

7.1 For weight and quantity determination, our weight, or the weight given by our own suppliers, or the weight determined at the shipping point is to be used as standard. Weight is to be verified by the production of a weigh-ticket. If the consignment is taken over by a rail, haulage or a carriage company, this counts as verification of the proper constitution of the consignment.

7.2 Complaints about weight determination can only be accepted if an official weigh-ticket is produced immediately after delivery. Steel scrap weight deviations of up to two hundredths cannot be claimed. The number of pieces or bales of material or similar, stated in the delivery note are not binding in the case of weight measured goods.

## 8. Liability

8.1 The purity of scrap is limited in regard to quality, material and the possibility of sorting by appearance and origin which is conducted with professional accuracy.

8.2 We are liable for damages only, if (a) liability is legally obligatory under relevant law, e.g. ProHaftG (German product liability code), or in cases of personal injury or damage to health, (b) we gave a warranty, (c) we neglected a major contract obligation (cardinal obligation) culpably, or (d) the damages are the result of grossly negligent or wilful conduct by ourselves.

8.3 In all other cases we exclude liability independent of the legal basis. In particular we are not liable for indirect damages, lost profit, and other financial losses of the customer.

8.4 In any case our liability is limited to the damages that we could have foreseen on the basis of the circumstances and facts known to us at the time of the entering into the contract. This limitation does not apply to liability based on cases (a) and (b) of No. 8.2 above.

8.5 The exclusion of liability and/or the limitation of liability as stated in the paragraphs above also applies for the actions as well as for the personal liability of our staff and vicarious agents.

8.6 The condition of the goods at the point in time in which they are passed on to the haulier, or at the latest when they leave the shipping point, is to be classed as decisive for contractual purposes.

8.7 Warranty claims from the customer require the proper compliance with the inspection and claim obligations rules of § 377 HGB (German Commercial Code). Defects which cannot be discovered within the time limits stated in § 377 HGB despite thorough inspection are to be taken up with us upon discovery in writing without delay. Goods in question are not allowed to be unloaded without our permission, otherwise these goods will be regarded as delivered without defect. If there is a discrepancy regarding scrap quality discovered only upon or after unloading, then the load is to be stored separately, otherwise it will be regarded as unloaded without defect.

8.8 With a defected delivery, the customer has at our discretion, the right to a reduction of the purchase price or a replacement delivery. If the replacement delivery is also defective, then the customer can decide on either reducing payment or cancelling the contract.

8.9 Except for cases of No. 8.2 the customer has no right to claim for defects, if the goods are sold as already declassified material.

8.10 Customer claims to damages against us are not assignable.

8.11 In any other circumstances the statutory provisions apply.

## 9. Retention of title, security transfers, cession by way of security

9.1 Until full settlement of all claims which we are entitled to presently or in the future, irrespective of the legal basis, the following securities will be granted to us which we will release upon demand at our discretion as far as its value exceeds the claims sustainably by more than 20%.

9.2 All delivered goods remain our property (reserved goods) until all outstanding accounts irrespective of the legal basis, including future or contingent claims and those from contracts entered into concurrently and thereafter have been settled.

9.3 Processing of reserved goods takes place in our name as producer in the legal sense of § 950 BGB (German Civil Code), without committing us. If the reserved goods are processed, combined or mixed with other goods by our customer, partial ownership of the new goods will be assigned to us in proportion to the invoice value of the reserved goods to the invoice value of other goods used. Should our ownership cease by combination or mixture, our customer herewith assigns us partial ownership of the new goods in proportion to the invoice value of the reserved goods to the invoice value of other goods used and stores them in our name free of charge.

9.4 It is the responsibility of the customer to insure the reserved goods against risks such as natural hazards and theft at its own cost.

9.5 The customer is entitled to process and sell the reserved goods – while retaining title – in the course of its normal business, as long as the customer is not in default. Pledging or security transfers are forbidden. All claims of the customer in regard to the reserved goods acquired by sale or other legal grounds (insurance claim, unlawful action) are transferred herewith by way of security to us in full amount. In the event of selling the goods on, the customer is obliged to inform us of the name and address of the buyer on demand. We entitle our customer revocably, to collect these transferred claims on our behalf in its own name. This authorisation can only be revoked if the customer does not properly meet its payment obligations.

9.6 If third parties gain access of the goods, the customer will indicate the goods that are our property and inform us immediately.

9.7 In case of a customer's conduct being contrary to the contract, in particular in the case of delay of payment, we are entitled to take the goods back, and if needed, demand the assignment of the customer's claim for return against third parties. The taking back and garnishment of reserved goods by us does not constitute a withdrawal from the contract unless §§ 499 et seq. BGB (German Civil Code) apply.

9.8 In the case of a final taking back, we are entitled to produce a credit note with an overall deduction of 25% without further proof. The customer is entitled to proof that a damage or reduction of value has not occurred or is significantly lower than the lump sum. The right to additional damages remains reserved.

9.9 Retention of title according to the previously mentioned conditions remains valid even if our individual claims are added to a current account.

9.10 Draft and cheque will only be accepted on account of performance, the retention of title remains untouched. If drafts were accepted, the goods remain subject to retention of title until the last draft has been cashed.

## 10. Place of jurisdiction, place of performance, governing law

10.1 The place of performance and exclusive jurisdiction in respect of all legal disputes arising from, or in connection with a contractual relationship, shall be Osnabrück. Notwithstanding such agreed jurisdiction, we shall always be entitled to bring legal action at the customer's place of business.

10.2 The contract is governed by the substantive laws of the Federal Republic of Germany. The CISG (United Nations Convention on Contracts for the International Sale of Goods) and the Hague Conventions Relating to a Uniform Law on the International Sale of Goods are not applicable.

## 11. Group set-off clause

11.1 We shall be entitled to set off any claims which we may have against the customer, against all claims which the customer may have, for whatever legal reasons, against companies in which Georgsmarienhütte Holding GmbH has a majority shareholding, either directly or indirectly.

11.2 The current group of companies in the sense of No. 11.1 above, in which Georgsmarienhütte Holding GmbH has a majority shareholding, either directly or indirectly, can be viewed in the internet under <http://www.georgsmarienhuetten-holding.de>. Upon request, the customer will be provided at any time with the information on the group of companies in the sense of the paragraph above.

## 12. Severability clause

If any individual points of these conditions become invalid, the rest of the previously mentioned conditions remain valid. The invalid provisions shall be interpreted in a way that the legally and commercially intended purpose can be achieved. The same applies when gaps in the contract are found during the implementation of the contract. The contract partners are obliged to amend the invalid provision by a valid provision or to close the gaps without delay.

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