

TERMS OF SALE AND PAYMENT

§ 1 Applicability, contractual bases

1. These terms of sale and service apply to businesses.

These general terms of delivery and service only apply to consumers with the following restrictions and only provided that they do not conflict with the provisions of §§ 305 et seqq. Bürgerliches Gesetzbuch (German Civil Code).

2. Customer terms and conditions of purchase deviating from the STS terms are excluded; STS shall only be bound to these, even if referenced in the purchase order, when expressly acknowledged in writing by STS. In exceptions where the applicability of the customer's terms and conditions of purchase is agreed, the provisions of STS also apply provided that they do not pertain to subject matters stipulated therein.
3. Deliveries and services are based on the STS offer and/or the written order acknowledgement of STS referencing this offer or confirming the customer order.
4. Any agreements made at the time the contract is concluded and during its term must be confirmed in writing by STS.
5. Unless expressly stated otherwise, all offers from STS are non-binding.
6. STS is entitled to use third parties as vicarious agent at any time for the purpose of compliance with its obligations.

§ 2 Dimensions and properties, samples

1. Unless otherwise marked, all delivery and/or performance specifications related to an STS offer – descriptions of properties and quality as well as dimensions and weights – as well as any associated samples are only approximate and only authoritative within the scope of tolerances customary in the industry.
2. Our specifications regarding dimensions, properties and uses for our products are merely intended as a description and do not constitute quality agreements, assured properties or other guarantees.

§ 3 Prices and payment terms

1. The agreed prices are subject to the applicable value-added tax, for deliveries furthermore ex warehouse STS also plus packaging but excluding freight charges and demurrage, transit insurance and other shipping charges unless expressly agreed otherwise; our goods are only insured against transport risks where agreed separately and at the customer's expense.

Payment and banking fees are solely payable by the customer.

In the case of call-off orders and any orders requiring more than six months to be completed, STS reserves the right to charge a pro rata surcharge to the prices corresponding with the change in cost factors.

2. STS only accepts drafts and checks based by special agreement and only free of expenses and on account of payment with reservation of discount ability with value date of the date when STS is able to access the equivalent value.
3. If the customer is in payment default, subject to asserting further claims for damages, STS charges interest in the amount of its own liabilities to banks, at a minimum in the amount of 9 percentage points above the base lending rate of the European Central Bank; for consumers, the default interest rate is 5 percentage points above the base lending rate of the European Central Bank. The customer is at liberty to prove STS suffered no or considerably less damages caused by default.

If the customer is in default with all or part of a delivery, all receivables of STS due from the customer become due immediately; any further deliveries will then only be made against prepayment or cash on delivery.

4. The customer's rights to withhold payments or to refuse performance not based on wilful or grossly negligent breach of contract by STS or its (vicarious) agents and/or employees against pecuniary claims of STS are excluded unless the counterclaims exercising such rights are based on undisputed or determined without further legal recourse. This exclusion does not apply, in the case of defective partial deliveries or services paid by the customer, as long as STS does not supply the respective replacement or replacing services in advance against further payment obligations of the customer.
5. The customer may only offset against pecuniary claims of STS with counterclaims recognized by STS or determined without further legal recourse.
6. If after concluding the contract, STS obtains information that the customer may not be able to obtain credit in the amount corresponding with the order size, STS is entitled to withhold the goods and at its discretion require advance payment or a security prior to delivery; claims for damages due to non-performance remain reserved.

If a circumstance becomes known for certain which precludes the absolute creditworthiness of the customer, all outstanding accounts of the customer become due immediately; in this case, any extension agreements etc. become void.

§ 4 Transfer of risk

1. The risk for deliveries is transferred to the customer at the time the goods are handed over to the carrier; this also applies to carriage paid deliveries by STS by way of exception. If the customer collects the goods from STS, the risk is transferred at the time the customer is notified the goods are ready for despatch.
2. The carrier, means of transport and transport route are determined by STS with its own due care unless specified by the customer in due time prior to expiry of the lead time. We choose the shipping method using equitable discretion without obligation to choose the fastest or cheapest shipping method/route.

§ 5 Lead times, call-off orders, default

1. Agreed lead times and delivery deadlines start with the customer receiving the STS order acknowledgement, however not before receiving any documents to be provided by the customer, particularly delivery and/or performance specifications, and not prior to making an agreed down payment.
2. Partial deliveries and/or performance are permissible; these are billed separately based on the scope of delivery.
3. Delays for reasons beyond the control of STS extend the lead times and delivery deadlines accordingly; this also applies if such delays arise if STS is already late. STS will promptly notify the customer of circumstances of this type.
4. In the case of delay in delivery and performance for which STS is responsible, the customer must set STS a appropriate grace period. If STS has not indicated being ready for delivery or performance at the end of this grace period, the customer is entitled to withdraw from the contract with respect to the outstanding part of the delivery or service or, in the event legal representatives or vicarious agents and/or employees of STS are at fault due to wilful intent or gross negligence, demand damages instead of fulfilment for this portion; in the case of partial default the customer indicates having no interest in partial fulfilment, he is entitled to the aforementioned rights with respect to the entire contract.

5. Delay of delivery and performance caused by the customer do not affect the agreed payment obligations and payment terms. If the customer is in default of acceptance or culpably violates other obligations to cooperate, STS is entitled to demand compensation for any damages incurred by this, including any additional expenditures. If the customer conclusively refuses to accept the goods for reasons beyond the control of STS, STS's claim for damages is at least 15% of the net contract price without STS being obligated to prove the damages; the customer is free to establish STS suffered no or only minor damages.
6. If the acceptance deadline is not adequately indicated in call-off orders, it ends at the end of the current calendar year. If the customer calls off the call-off goods within the agreed period, STS is free to deliver the completed delivery without further notice or to store these at the expense of the customer. STS is further entitled to set the customer a grace period for acceptance and, in the event the grace period expires fruitless, to withdraw from the contract in whole or in part and/or demand compensation.

§ 6 Retention of title in goods and tools

1. STS retains ownership in the delivered goods – including partial deliveries – until the complete delivery has been paid in full.
2. Any machining or processing of goods subject to STS's retention of title by the customer, which he is entitled to within the scope of the proper course of business, is on behalf of STS without obligations arising for said; STS also reserves ownership in these goods as per item 1. When combining, mixing or blending the goods subject to STS's retention of title with other items or upon processing or machining, STS gains co-ownership in the new goods in relation to the invoice value of the goods subject to retention of title to the value of the new item; the customer will store the new item for STS with the diligence of a prudent businessman.
3. Subject to cancellation for reasons the customer is liable for, the customer shall be entitled to sell the goods owned or co-owned by STS in return for payment in line with the proper course of business. In this case, the customer hereby assigns his purchase price claim against the buyer including all security and ancillary rights from existing business relations in the amount of the respective arrears with STS to STS until all claims of STS have been paid in full; in the event goods co-owned by STS, this requirement only applies to the partial purchase price amount to the invoice value of the goods subject to retention of title. Stipulating a non-assignment clause with respect to the purchase price demanded from the buyer is not permitted.
4. Assignment as per item 3 is carried out as a precaution, provided that the customer remains entitled to collect the purchase price from the buyer, if and when he meets his payment obligations to STS or his financial circumstances do not deteriorate, in which case he must immediately notify STS. At the request of STS, the customer must provide STS with all documents and informations required to collect the purchase price; in the event the circumstances in sentence 1 arise, STS is entitled to notify the buyer of the assignment.
5. Upon request of the customer, STS undertakes to release the securities it is entitled to insofar as the realizable value of these securities exceed the receivables being secured by more than 10%; STS is free to choose the securities being released.
6. The customer is not entitled to pledging or to a transfer goods for security purposes owned or co-owned by STS; if such goods are seized by third parties, the customer must disclose the ownership structure to said and promptly notify STS and provide all documents required to intervene.
7. Tools, equipment and moulds, etc., STS produce or has produced in fulfilment of its obligations or on behalf of the customer remain the property of STS, including if the customer bears part of the respective manufacturing costs. The tools, equipments and moulds etc., are only used for the customer's orders.

§ 7 Customer rights in the case of defects

1. Excluding further claims, in the case of full or partial defect in delivery or services, the customer is entitled to demand supplementary performance in form of remedy or – at the discretion of STS – in form of replacement or subsequent performance to the extent of the defect, but replacement only upon return of the defective goods; in the case of permanent failure of supplementary performance the customer's right under the other conditions regulated here to demand reduction in the price, compensation for loss or reimbursement of expenses or to withdraw from the contract remains unaffected.
2. STS must be granted an appropriate grace period for supplementary performance or replacement; otherwise it is released of its supplementary performance obligation.
3. When supplying third-party products, instead of replacement as per item 1, half sentence 1, STS is at its discretion also entitled to assign to the customer any related or further claims for defects it has against the manufacturer or upstream supplier; STS will support the customer in asserting any such claims. The stipulation under item 1, half sentence 2, applies to STS accordingly.
4. If the customer installed or attached the defective purchased item in/to a different item according to its nature and intended use, in line with supplementary performance, STS is obligated to compensate the customer for the expenditures necessary to remove the defective item and install or attach the repaired or non-defective item delivered. This does not apply if the customer is aware of the defect when installing or attaching the defective item. If the customer was not aware of a defect due to gross negligence, he can only claim compensation for the installation and removal costs and any other rights related to the defective item if STS fraudulently concealed the defect or guaranteed the properties of the item.
5. The customer's duties to examine and file a complaint as per § 377 Handelsgesetzbuch (German Commercial Code) remains unaffected.
6. Claims for defects – With the exception of claims for compensation in damages based on defects, to which § 8 below applies, claims for defects become subject to the statute of limitations on the expiry of one year from the date of the passing of the risk to the customer, unless STS has given a warranty for the properties and condition of the objects of the contract to be supplied and these properties and condition are not present or STS has fraudulently concealed a defect. In relationships with consumers the statute of limitations is regulated by the statutory provisions.

§ 8 Liability, disclaimer, limitation of liability

1. The statutory and contractual liability of STS and that of its performing agents and vicarious agents for all losses by reason for instance of default in conclusion of the contract, deficiency in the goods (including any consequential damages arising therefrom), other breaches of duty or by virtue of tort is excluded. This disclaimer, however, does not apply in cases of loss, in which STS has given a warranty for the properties and condition of the objects of the contract to be supplied and has caused default in the said properties and condition or in which STS has undertaken to accept the procurement risk or has fraudulently concealed a defect or has breached a cardinal duty; cardinal obligations are duties which are imperative to enable the proper execution of the contract and which can typically be expected to be fulfilled.

This exclusion of liability further does not apply to

- liability for damages resulting from injury to life, body or health due to willful or negligent breach of duty by STS or one of its legal representatives or agents and/or employees, or
- liability for other damages due to willful or grossly negligent breach of duty by STS or one of its legal representatives or agents and/or employees, or
- liability for delay, provided that a fixed delivery date has been agreed, or

- statutory liability regardless of negligence or fault, e.g. under the Produkthaftungsgesetz (German Product Liability Act).
2. The above provision also applies if the customer demands compensation for damages instead of compensation for useless expenses.
 3. With the exception of liability for losses caused deliberately and/or liability arising from the requirements of mandatory statutory provisions, e.g. under the Product Liability Act, the liability of STS, irrespective of the cause in law and in accordance with the nature and scope, is limited and/or restricted to the losses foreseeable and typical of transactions of the present nature at the time of conclusion of the contract; with respect to the breach of cardinal duties this applies, however, solely in cases of slight negligence.
 4. All claims for compensation in damages from the customer against STS and its performing agents and vicarious agents, which are not excluded by the foregoing and which do not rely on culpable intent or gross negligence, become subject to the statute of limitations on the expiry of a period of 2 years; the same applies accordingly, if, instead of claiming compensation in damages, the customer demands the payment of compensation for useless expenditure. By way of derogation therefrom, however, claims for compensation in damages by virtue of infringement of a duty to provide supplementary performance become subject to the statute of limitations on the expiry of a period of 1 year in cases of simple negligence. The limitation period for contractual damages due to defect begins on transfer of risk, for all other claims after knowledge of the occurrence of damage and who caused the damage. For claims due to willful damage or in cases of liability prescribed by law regardless of negligence or fault, e.g. under the Produkthaftungsgesetz (German Product Liability Act), shall become time-barred within the periods stipulated by law.
 5. The limitation period in the case of delivery recourse as per §§ 445a, 445b Bürgerliches Gesetzbuch (German Civil Code) remains unaffected.
 6. Reversal of the burden of proof is not included in the foregoing provisions of this § 8.

§ 9 Suspension of contractual obligations

1. Events and circumstances, whose occurrence or prevention are beyond the control of the contracting parties (this shall include for example natural events, orders of higher authorities, strike and lockouts, as well as any impediment to performance for which the contracting parties are not responsible, particularly disruptions in transport, traffic and operations - as well as those and generally impediments to performance at the customer, upstream suppliers and subcontractors -, furthermore bottlenecks, shortages and other delays in raw material procurement or processing difficulties due to the properties of the materials to be provided by the customer), release the contracting parties of their contractual obligations within the scope and for the period of such occurrence.
2. If events or circumstances as per item 1 result in a considerable increase in the purchase or procurement costs of STS, STS may – even in the case of fixed price agreement – demand an appropriate price increase from the customer after proving the increase. If the customer does not approve such price increase within a reasonable period to be set by STS, STS is entitled to withdraw from the contract with respect to the part of the contract not yet fulfilled.
3. If STS is ultimately unable to meet the reasonable grace period set by the customer due to events or circumstances as per item 1, the customer is entitled to withdraw from the contract with respect to the part of the contract not yet fulfilled without being entitled to further claims. Apart from this, under the same conditions STS is entitled to withdraw from the contract, if its efforts to restore the ability to deliver/perform, to which STS remains obligated, have been unsuccessful within 6 months after the occurrence of such impediment; in the case of non-supply by upstream suppliers, this only applies if STS has taken all reasonable precautions

to ensure timely coverage transaction and the supplier has not delivered for reasons beyond the control of STS.

§ 10 Early termination of contract

1. If the contractual relationship is terminated for any reason before STS has fulfilled the entire order, its deliveries and/or services until such time shall be remunerated as follows:
 - a) for flat fee deliveries and/or services, the full compensation is due provided STS rendered its delivered and/or services in full; otherwise the full remuneration shall be reduced by the percentage of the outstanding portion, which if necessary shall be estimated;
 - b) Deliveries and/or services to which separate remuneration amounts are assigned/related or billed according to expenditure are billed based on the execution state.
2. Any further claims of STS for early termination of contract remain unaffected.

§ 11 Change in facts

If following full performance of contract by STS the financial, technical or legal facts at the time the contract is concluded change to an extent the contracting parties cannot be reasonably expected to adhere to the existing contract – particularly e.g. if performance and counter performance are no longer balanced as contracted –, the contracting party being at a disadvantage due to the change in facts may request an appropriate adjustment of the contract from the other party.

§ 12 Place of fulfilment and jurisdiction

1. The place of fulfilment for deliveries, services and payments is the registered office of STS.
2. The place of jurisdiction is the registered office of STS, provided the customer is a merchant, corporate body under public law or special fund under public law.

§ 13 Applicable law

The contractual relationship shall be subject to the; the UN Convention on Contracts for the International Sale of Goods of 11.04.1980 (CISG) is expressly excluded.