

# General Terms and Conditions of Delivery (GTD)



**MAX STREICHER GmbH & Co. Kommanditgesellschaft auf Aktien**  
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## § 1 General Provisions

- (1) All our deliveries, services and quotations are solely subject to these General Terms and Conditions of Delivery (hereinafter referred to as GTD) even without being explicitly mentioned during negotiations. Therefore our GTD shall also apply to all future business transactions with the customer/buyer, even if they are not repeatedly or explicitly agreed upon. Once the merchandise has reached the customer/buyer, these terms are considered to be accepted. Sentence 2 does not apply to non-merchants.
- (2) Conflicting or contradictory terms of the customer/buyer do only apply if we have explicitly approved of their implementation in writing.

## § 2 Offer

- (1) Our offers are subject to change and non-binding. A contract is only reached with our written order confirmation/contract signature only with the contents confirmed therein. Cost estimates have to be compensated.
- (2) Any information in catalogues, brochures, advertisements, price lists, proficiency tests, given formulations, the internet, samples, patterns etc., especially in weight, dimensions, performance parameters, composition, etc. are not binding.
- (3) Any statements regarding delivery/service time are approximate and non binding, unless its liability was expressly agreed in writing.

## § 3 Prices

- (1) Our prices are normally quoted ex works, including loading, plus legal valid VAT on the day of the billing, but excluding packaging (Customer/buyer has to dispose the packaging at his own expense). Cost of any agreed transport, similar or other insurance and any duties and taxes have to be borne by the customer/buyer. For partial deliveries/services each delivery/service can be billed separately.
- (2) If more than four months elapse between the conclusion of the contract and the delivery/service date and if during this time changes in the price basis (e.g. price increases for raw material, pay rises etc.) occur, we reserve the right to adjust our prices accordingly after informing the customer/buyer. With agreed fixed prices, this applies only if the changes to the date of the contract were not foreseeable.
- (3) If no prices have been agreed upon conclusion of the contract, our list prices valid at the delivery date shall apply.
- (4) For freight paid deliveries/services, increases in freight rates between order confirmation and delivery/service as well as freight costs caused by freight staggering, for example, caused by lower volume demand of the customer/buyer to the contractual agreement are for the account of the customer/buyer. Waiting times at the place of delivery/services are not included. The customer/buyer has to provide for any necessary assistance/utilities during unloading.

## § 4 Terms of Payment

- (1) In principle prices are due net (without deductions) with delivery/service. Payments shall only apply as timely effected if we can dispose of the money with value on due date specified by us on any of the accounts.
- (2) After receiving the order confirmation/contract signature the customer/buyer has to make a deposit of 30 % of the total contract value as well as for supplies after notice of readiness a interim payment equal to further 30 % of the total contract value.
- (3) In case of default of the customer/buyer we shall be entitled to demand at least the legal interest in accordance with Section 288 German Civil Code (BGB). We shall be at liberty to prove and claim further interest and further damage caused by default.
- (4) Non-compliance with the terms of payment, default or circumstances that are suitable to decrease the creditworthiness of the customer/buyer result in immediate maturity of all our claims.
- (5) We shall reserve the right to further contractual or statutory claims in the case of default.
- (6) The customer/buyer shall only be entitled to setoff if the counterclaims have been legally established, are undisputed or accepted by us and are based on the same contract.
- (7) The customer/buyer shall only be entitled to exercise a retaining lien if the counterclaim is based on the same contract.
- (8) We are not obliged to accept cheques and bills of exchange. Discount and note charges are for the account of the customer/buyer. To pay by check or draft is always carried out only on account of performance.
- (9) We are entitled to charge payments of the customer/buyer at first to his older debts or respectively to the costs and interest and only then to the primary debt.

## § 5 Delivery Period and Delivery Impediments

- (1) The delivery/service deadline shall commence with the sending of the order confirmation/contract signature, however, only after the customer/buyer has provided documents, official approvals and releases to be procured on his part as well as after an agreed down payment has been received and all technical issues have been clarified. Compliance with the delivery deadline is subject to our own proper and timely delivery/service of our suppliers or subcontractors. We inform the customer/buyer about delays immediately.
- (2) The delivery/service deadline shall be deemed to have been observed if by the time of its expiration the delivery/service item has left our factory or notification of readiness for dispatch/completion has been given or respectively the readiness for acceptance has been indicated as far as an acceptance has been agreed.
- (3) In the case of unexpected circumstances which are beyond our control and which we could not avert despite all reasonable care - no matter if they occur at our factory or at a subcontractor - like particularly force majeure (e.g. war and natural disasters), labour dispute, regulatory measures, energy loss, delayed raw material supplies, etc. - we shall be entitled to withdraw completely or partially from the contract or to extend the delivery/service date by the duration of the impediment. We shall immediately notify the customer/buyer of such circumstances.
- (4) If delivery/service is unduly delayed, the customer/buyer shall be entitled to withdraw from the contract after the expiration of a reasonable extension of time; if our delivery/service is impossible, he shall also have this right without extension of time. The same applies if a firm deal has been agreed or if the buyer demonstrates, due to our delay, that he is no longer interested in the contract. Further claims of the buyer, for whatever legal reasons - in particular claims for damages (including any consequential damages) as well as claims for reimbursement of expenses - are excluded without prejudice to § 10 paragraph 4.
- (5) The exclusion of liability stipulated in Section 4 shall not apply if the damage was caused by intent or gross negligence on our part, our legal representatives or agents. The liability is then limited to the foreseeable damage.
- (6) If dispatch is delayed at the customer/buyer's request, he will be charged the costs accruing from storage.
- (7) Negotiations on desired changes of the customer/buyer in the delivery/service interrupt the delivery/service time and lead to an agreement to extend the time necessary for a changed execution.
- (8) If delivery free site/unloading point was agreed upon, the agreed unloading point has to be easily accessible from our vehicles. If the access to the unloading point is not possible, the unloading and transfer of risk pursuant to § 6 occurs at the place to go freely by vehicle.
- (9) Measures and weights, composition and similar parameters shall be subject to the usual deviations and tolerances. The quantity determined from us on an officially tested and calibrated scale or weight determined according to quantities, for delivery by the piece, current meters and other units or the amount determined during loading shall be relevant for the billing. The customer/buyer shall be entitled to review the investigations on his own costs.
- (10) We are entitled to partial deliveries/services.
- (11) If the buyer is in default of acceptance or violates his obligations to cooperate, he is obliged to compensate the potential damage and extra expenses. The risk transfers in accordance with § 6 section 2.

## § 6 Passing of Risk

- (1) The risk shall pass to the customer/buyer as soon as the delivery/service is handed to the person carrying out shipment or have left our works for dispatch. This also applies to the supply of partial deliveries/services if we have taken over other services, such as the bearing of shipping costs, delivery and installation of the deliveries/services etc. Unless prior to dispatch a technical preliminary acceptance is required, it will be carried out in any case in our factory.
- (2) If the delivery/service is delayed or made impossible through no fault of ours, the risk shall pass to the customer/buyer as soon as he is notified of the readiness for dispatch or acceptance.
- (3) Deliveries/Services items are to be accepted by the customer/buyer notwithstanding his rights under §§ 8, 9 even if they feature negligible defects.

## § 7 Reservation of Title

- (1) We reserve title to all deliveries/services until the customer/buyer has paid all debts from the business relationship deriving from present or future claims including all current account balance claims.
- (2) In the event of breach of contract by the customer/buyer, in particular in the case of default in payment, we shall be entitled to take back the deliveries/services; the customer/buyer shall agree to the taking-back in this case even now. The taking-back shall only represent a withdrawal from the contract if we declare this expressly. The costs accruing from the taking-back (especially transport costs) shall be charged to the customer/buyer. We shall furthermore be entitled to prohibit the customer/buyer from re-selling or processing the reserved deliveries/services and to withdraw the direct debit authorization (§ 7 section 5). The customer/buyer shall only be entitled to demand delivery of the deliveries/services taken back without express notice of withdrawal after he has paid the entire purchase price and all costs accruing from the taking-back.

- (3) The customer/buyer must treat the deliveries/services with care (including the necessary inspection and maintenance work) and to insure them against fire, water damage and theft etc. sufficiently for the replacement value. If the customer/buyer does not prove the insurance on demand we are entitled to conclude an adequate insurance at the expense of the customer/buyer. The customer/buyer shall be liable for a decline in value, damage, loss or destruction also without fault.
- (4) The deliveries/services and the claims substituting them may neither be pledged nor assigned or transferred by way of security by the customer/buyer. The customer/buyer must inform us in writing immediately of seizures or other interference by third parties to the reserved deliveries/services, give us all the necessary information and hand over the respective documents so that we can file a suit in accordance with Section 771 ZPO (German Code of Civil Procedure). If we are left with any costs of this suit although we have won the case in accordance with Section 771 ZPO, these are to be borne by the customer/buyer.
- (5) The customer/buyer shall be entitled to resell, process or mix the deliveries/services in the ordinary course of business; however, he shall assign to us even now all claims deriving from the resale, processing, mixing, connecting with real estate or from other legal reasons (in particular from insurances or other tortious acts) to the amount of the price agreed with us (including VAT). The customer/buyer shall be entitled to collect the claims assigned to us, notwithstanding our right to collect the claim ourselves. We, however, commit ourselves to not collecting the claim as long as the customer/buyer meets his obligations to pay from the collected proceeds, as long as he is not in default in payment and no application for adjudication in bankruptcy or an similar procedure has been filed or such an adjudication will be or has been opened. However, if this is the case, the customer/buyer must notify us at our request of the assigned claims and the debtors, give us all the necessary information for the collection, hand over the respective documents to us and notify the debtor (third party) of the assignment.
- (6) Does the client of the customer/buyer not agree to the partial assignment for deliveries/services or if that is excluded, the customer/buyer - regardless of the value or price of the deliveries/services - will assign all claims due against his client. Payments of the client to us will be remitted immediately to the customer/buyer as soon as our purchase price and any additional claims have been settled.
- (7) The reservation of title shall also apply to products resulting from the processing, mixing and connecting with our deliveries/services to their full value, with these processes being performed for us as manufacturer, however, without any obligations and takeover of a manufacturers liability. If the reserved deliveries/services are processed, mixed or connected with goods of third parties and if they keep their ownership, we shall acquire co-ownership of the new item in proportion of the actual value of these goods to the actual value of our reserved deliveries/services. However, if the reserved property is to be regarded as the main thing, we will acquire sole ownership.
- (8) Securities due to us are so far not recorded as the value of our securities exceeds the face value of the debts to be secured by 20 %; we on our sole discretion decide which securities will be released.

## § 8 Deficiencies of the delivery, liability

- (1) We are liable for defects in the deliveries/services in case of the proper performance of the inspection and notice obligations e.g. according to § 377 of the German Commercial Code by the customer/buyer, as follows; whereas on the supply of asphalt mixing goods, bulk goods and similar products an immediate complaint has to be made at delivery, the complaint requires a sampling according to the German material standards (e.g. DIN 1996) to be done on site in the presence of our representative.
- (2) As far as there is a deficiency of the deliveries/services we have the right to decide whether we will remove the deficiency or deliver an item without deficiency (supplementary performance). The condition for this is that it is about a significant deficiency. Replaced parts become our property. If one or both of these kinds of supplementary performance are impossible or disproportional, we have the right to refuse it. We also can refuse the supplementary performance as long as the customer/buyer will not fulfil his liability to payment to the extent that corresponds to the part of the delivery/service free of defects. The customer/buyer is obligated to give us the necessary time and opportunity for the repair, otherwise we are released from our obligation of supplementary performance and liability.
- (3) If the customer/buyer takes the deliveries/services at a location other than the place of performance or contractually intended production and operation site or if the place of performance is abroad, he has to bear the resultant additional costs (e.g. shipping and travel costs) of supplementary performance.
- (4) If the supplementary performance mentioned in section 2 is impossible or failed, the customer/buyer has the right to withdraw from the contract in accordance with the legal regulations. A non-merchant also has the right to reduce the purchase price accordingly. Insofar as § 10, section 4 states otherwise further claims of the customer/buyer are excluded. The supplementary performance shall not be deemed failed until the second unsuccessful attempt has been carried out, unless further attempts are reasonable for the customer/buyer.
- (5) There will be no warranty for damages resulting from the following: unsuited or improper use, non-observance of operating instructions, incorrect installation by the customer/buyer or third parties, natural wear and tear, incorrect or negligent treatment, unsuited equipments, defective construction works, unsuited building ground, exchange materials, chemical, electrochemical or electrical influences - as far as they are not represented by us - changes or repairs done by the customer/buyer or third parties that are improper and do not have our prior agreement.
- (6) Insofar as no longer deadline results indispensably from law or we have taken over a guarantee, the warranty claims of the customer/buyer prescribe in one year, starting with the agreed date of delivery/services (§ 5 section 2), at the latest when the deliveries/services have been performed. In case that we are entitled to plead the statute of limitations against the legitimate warranty claims/withdrawal rights of the customer/buyer and therefore the customer/buyer is entitled to refuse to pay the price, we shall be entitled to withdraw from the contract.
- (7) In case of sale/delivery of used goods the acquisition of any warranty is excluded.

## § 9 Liability for secondary obligations

If the customer/buyer cannot use the delivery/service according to the agreed purpose because of the violation of our obligations to advise and to provide information - in particular the obligation to give instructions for operation and maintenance of the delivery/service - as well as of other contractual secondary obligations due to our fault, prior or after the conclusion of the contract, the regulations of § 8 and § 10 shall apply by excluding any further claims of the customer/buyer.

## § 10 Withdrawal of the buyer and other liabilities on our part

- (1) The following regulations of withdrawal are valid in case of the violation of obligations other than the obligation to deliver the deliveries/services without significant deficiency (warranty) and they neither exclude nor limit the legal right of withdrawal. In the same way legal and contractual rights and claims for which we are entitled to may not be excluded or limited.
- (2) The customer/buyer can withdraw from the contract if the whole delivery/service becomes finally impossible. This shall also apply in the case of incapability. The customer/buyer has also the right to withdraw from the whole contract if he can prove that in case of the delivery of similar items the execution of a single part of the delivery/service became impossible and that he is not interested in the partial delivery. If this is not the case, so the customer/buyer can reduce the quid pro quo in case of partial impossibility. The right of withdrawal shall not apply in case of insignificant violation of obligations on our part. In case of a partly delay in performance sentence 2 shall apply accordingly.
- (3) The withdrawal is excluded, if the fact that gives the customer/buyer the right to withdraw is due to the customer's/buyer's sole or predominant sole responsibility or if the fact that gives him the right to withdraw is represented by us and occurs during the time the customer/buyer is in default of acceptance. In the case of impossibility by reason of the aforementioned circumstances we will keep our claim for quid pro quo in accordance with § 326 II of the German Civil Code.
- (4) Other claims of the customer/buyer as stated within this GTD that arise of whatever legal reason - in particular claims due to culpa in contrahendo, violation of contractual main and secondary obligations, reimbursement of expenses, tortious act as well as other tortious liabilities - shall be excluded. In particular, this shall apply for claims for damages beyond the delivery/service, indirect and consequential damage as well as for the claim for reimbursement lost profit. Claims that do not result from the defectiveness of the deliveries/services are also regulated by the disclaimer. All disclaimers of the GTD shall not apply where there is damage from a culpable violation of life, body or health or a damage caused by wilful intent or gross negligence. The disclaimer is also not applicable in cases where there is liability as per Product Liability Act for defects of the deliveries/services for personal or property damage to privately used objects. Nor the liability in case of taking over of a guarantee shall be excluded if a neglect of duty just covered thereby causes our liability. For claims of reimbursement of expenses the above shall apply accordingly. Our liability is generally limited to the respectively foreseeable damage and up to the maximum amount of order.
- (5) If and to the extent the above mentioned disclaimer and limitation of liability is or becomes legally objectionable in whole or in part, our liability shall be limited to the extent permitted by law.

## § 11 Trade Secrets

The customer/buyer obligates himself to keep permanently secret all information became accessible to him in connection with the business relationship with us concerning internal circumstances and procedures or those of our clients, suppliers or subcontractors - both technical and commercial/economic - which are designated as confidential or are recognizable due to other circumstances as commercial or industrial secrets and not to record them, nor disclose them to third parties or exploit them in any way himself, unless this is required to achieve the contractual purpose.



#### § 12 Place of Performance, Legal Venue and Applicable Law

- (1) The place of performance shall be the place of consignment (works or place of storage).
- (2) Disputes arising out of or in connection with the respective contracts with the customer/buyer will be decided by the ordinary courts. Jurisdiction is our registered headquarters, insofar as permitted by law. However, we are entitled to sue at our discretion at any other appropriate court. Sentence 2 shall not apply if the customer/buyer is non-merchant.
- (3) All claims and rights resulting from the respective contracts with the customer/buyer shall be ruled exclusively by German Law. Any conflicting provisions of private international law and the UN Convention on Contracts for the International Sale of Goods (CISG) are explicitly excluded.

#### § 13 Other Provisions

- (1) In case of conflicts between the GTD and the concluded contract the contractual agreements shall take precedence.
- (2) The usage of our name, offers, deliveries/services etc. for advertising purposes is not permitted without our written permission.
- (3) The buyer may not assign any rights out of or in connection with the contract to third parties without our prior written permission.
- (4) We have the right to set off all claims of any kind to which we or companies in our group (STREICHER group) are entitled, towards all claims of the customer/buyer which are due against us or companies in our group, even with different maturity of the claims, provided that the membership of the group was recognizable when concluding the contract.
- (5) Data resulting in connection with the business relationship may be stored by us and shared within our company group. The customer/buyer gives his approval on this.
- (6) Contract and correspondence language is German.
- (7) Additional agreements, amendments or supplements to the contract must be in writing.
- (8) Should any individual provisions of the GTD be or become ineffective or void in whole or in part, this shall not affect the effectiveness of the remaining provisions. The contractual parties rather commit themselves to agree on a provision that replaces the ineffective or void provision and that corresponds with its economic purpose to the greatest possible extent. For legally objectionable provisions in the GTD or the concluded contracts the lawful provisions coming closest to the objectionable provisions shall apply (e.g. for limitation periods the shortest possible time) without any further agreement by the parties.