

Jebens GmbH

Terms of Delivery and Payment

Valid from 1 September 2003

Note: This is a translation of the German version. In cases of uncertainty or conflict, the German version shall prevail.

A. General provisions

I. Contract conclusion

1. Our deliveries and services are exclusively provided on the basis of the provisions below, also in harmonization transactions. The buyer's purchasing conditions are herewith contradicted. These provisions also apply to future contract conclusions even if not expressly referred to.
2. Our offers are non-binding. Our declarations must be in writing.

II. Payment terms

1. Payments must be provided without discount deduction and in a manner ensuring that we can dispose over the amount on the due date. The buyer is only entitled to setoff against claims that are undisputed or determined without further legal recourse, and only entitled to rights of retention insofar as they are based on the same contractual relationship.
2. If due dates are exceeded, interest will be claimed at the legally set rate.
3. If our payment claim is put at risk by post-hoc circumstances leading to a significant deterioration of the financial situation, we are entitled to declare it due regardless of the term of bills of exchange taken in payment.
4. If a buyer's default indicates a risk for our claim, we are entitled to prohibit the further processing of delivered goods, take goods back, enter the buyer's establishment and remove the goods if required. Repossession is no withdrawal from contract.
5. In the event of nos. 3 and 4, we can revoke direct debit authorizations (A. V. no. 7) and demand advance payment for deliveries still outstanding.
6. The buyer can avert the legal consequences named in nos. 3 – 5 by providing securities to the amount of our jeopardized payment claim.
7. The legal regulations for default of payment remain unaffected.
8. Payment transaction costs are borne by the buyer.

III. Securities

We are entitled to securities of the customary type and scope for our claims, also insofar as they are conditional or limited in time.

IV. Intra-group recharge

Our authorization by our affiliates AG der Dillinger Hüttenwerke, Dillingen/Saar, Vertriebsgesellschaft Dillinger Hütte GTS mbH, Stuttgart, and Ancofer Stahlhandel GmbH, Mülheim/Ruhr, entitles us to set off all claims due to us from the buyer against all claims due to the buyer from us or the mentioned companies, irrespective of the legal grounds.

V. Retention of title

1. All delivered goods remain our property (reserved goods) until the fulfilment of all claims, especially also the respective balance claims, due to us in the business relationship. This also applies to all future and conditional claims, e.g. from reverse bills of exchange.
 2. Any processing of reserved goods takes place for us as the manufacturer within the meaning of Civil Code § 950 without obliging us. The processed goods are regarded as reserved goods as per no. 1.
 3. If reserved goods are processed, combined, and intermixed with other goods by the buyer, we are due co-ownership of the new item in the ratio of the invoice value of the reserved goods to that of the other goods used. If our property ceases to exist because of the combination, intermixture or processing, the buyer already assigns to us now the ownership of and/or expectant title to the new item due to the buyer to the extent of the reserved goods' invoice value, and in the case of processing in the ratio of the invoice value of the reserved goods to the invoice value of the other goods used, and safekeeps it for us free of charge. Our co-ownership rights are regarded as reserved goods within the meaning of no. 1.
 4. The buyer must only resell reserved goods in the ordinary course of business at its normal terms and conditions and as long as it is not in default, provided that the buyer reserves the ownership, and the claims from the resale pass to us as per nos. 5 and 6. The buyer is not entitled to other dispositions over reserved goods. Using reserved goods to fulfil contracts for work or for work and labour is also regarded as a resale within the meaning of section A. V.
 5. The buyer's claims from the resale of reserved goods are already assigned to us now. They serve as collateral to the same extent as the reserved goods within the meaning of no. 1.
 6. If the buyer resells reserved goods together with other goods, the claim from the resale is assigned to us in the ratio of the invoice value of the reserved goods to the invoice value of the other goods. If goods we co-own as per no. 3 are resold, the claim is partly assigned to us in proportion to our co-owned share.
 7. The buyer is entitled to collect claims from resales unless we revoke the collection authority in the cases as per section A II nos. 3 and 4. At our request, the buyer is required to immediately inform its customers of the assignment to us – insofar as we fail to do so ourselves – and to provide us with the information and documents required for collection.
- The buyer is not authorized to assign the claims in any case; this also applies to all kinds of factoring transaction, which are also not permitted for the buyer on the basis of our collection authority.
8. The buyer is required to inform us immediately of attachment or other encumbrances by third parties.
 9. If the value of the provided collateral exceeds the collateralized claims by more than 10 % overall, we are required to release the collateral insofar as our option upon the buyer's request.

VI. Place of fulfilment and jurisdiction

The place of fulfilment and jurisdiction for both contracting parties is Stuttgart. We are also entitled to sue the buyer at its place of general jurisdiction.

B. Performance of deliveries

I. Delivery periods, delivery dates

1. Delivery periods start from the date of our order confirmation, but not before all the order's details have been fully clarified; the same applies to delivery dates correspondingly.
2. If the buyer fails to meet contractual requirements - including cooperation requirements and ancillary obligations – such as the opening of a letter of credit, procurement of certificates at home and abroad, payment of an advance, or similar, on time, we are entitled to commensurately and reasonably extend/postpone our delivery periods and dates in keeping with the requirements of our production workflow, without prejudice to our rights from buyer default.
3. The dispatch date from the plant is decisive for compliance with delivery periods and delivery dates. If goods cannot be shipped in time through no fault of our own, the delivery periods and delivery dates count as observed with the notification of readiness for shipment, and the invoicing is initiated.

II. Dimensions, weights, quality

Deviations from the dimensions, weight or quality are permitted in keeping with EN/DIN or the customary practice.

III. Shipment, packaging, and transfer of risk

1. We select the shipper or freight forwarder.

2. If the loading or transport of goods is delayed for reasons the buyer is answerable for, we are entitled, at our reasonable discretion, to store them at the buyer's expense and risk, apply all measures we deem appropriate to preserve them, and invoice them as delivered. The same applies if goods reported as ready for shipment are not called off within four days. The statutory provisions for delayed acceptance remain unaffected.
3. The material is delivered unpackaged and unprotected from rust. Insofar as customary in the trade, we will deliver the goods packaged. The costs are borne by the buyer. The packaging, protection and transport materials will not be taken back.
4. If there is transport damage, the buyer is required to occasion a formal report from the competent bodies without delay.
5. The risk passes to the buyer as soon as the goods are handed over to the shipper or freight forwarder, and upon their leaving the factory or warehouse at the latest.
6. We are entitled to reject the loading of vehicles that appear unsuitable for safe transport or lack the means required to secure the cargo.

IV. Warranty

1. The quality of our goods is described by material specifications, EN standards and technical specifications or by reference thereto; this description serves to agree the quality within the meaning of Civil Code § 434 I 1. A guarantee for the quality within the meaning of Civil Code §§ 442, 443 or 444 is not given by this.
 2. Upon the inspection incumbent upon it (Commercial Code § 377), the buyer needs to immediately notify us if goods delivered by us exhibit a material defect. In this case, the buyer is required to immediately provide us with an opportunity to convince ourselves of the defect, and especially to provide us with the rejected goods or samples thereof upon request.
- If a defect is justifiably reported without delay, we will – at our option – remedy the defect or deliver a flawless item. Only if we fail to meet this requirement within a reasonable period is the buyer entitled to withdraw from the contract, to a reduction of the purchase price, or compensation for damages – in keeping with the provisions in section C.
3. Claims based on defects of movable items expire – subject to the provisions in Commercial Code §§ 478, 479 and other agreements - in five years for items that have been used for a building in keeping with their customary use and caused its defectiveness, and in one year in all other respects.
 4. If an agreed acceptance process is performed, the assertion of rights based on the defect of an item that can be discovered in this acceptance process is excluded.

C. General liability limitation

Unless agreed otherwise in these provisions, we will only be liable for damage compensation if the damage is based on a deliberate or grossly negligent breach of duty on the part of our legal representatives, executives or vicarious agents, or culpable non-compliance with major contractual obligations. In the event of a grossly negligent breach of duty by a vicarious agent or a culpable breach of major contractual duties, our liability will be limited to the foreseeable damage that is typical for the contract, except in the event of a deliberate or grossly negligent breach of duty by a legal representative or executive.

This provision leaves claims based on damages to items intended for private use or consumption under product liability law and claims based on injury to life, body or health unaffected, irrespective of their legal grounds.

D. Miscellaneous

I. Export certificate

If a buyer that is based outside the Federal Republic of Germany (extraterritorial customer) or its representative collects goods and conveys or ships them to the foreign territory, the buyer needs to provide us with the export certificate required for tax purposes. If this certificate is not provided, the VAT payable for the invoice amount of deliveries within the Federal Republic of Germany needs to be paid by the buyer at the respectively applicable VAT rate.

Cross-border deliveries are made with duty unpaid and untaxed. Insofar as customs, taxes or other dues are levied, they need to be borne by the buyer.

For triangular, chain or similar transactions involving other companies but Jebens GmbH and the buyer, the buyer undertakes to meet all statutory requirements in its sphere of responsibility for the correct administrative handling in the states concerned, such as the tax identification number, tax representative, etc.

II. Applicable law

1. All legal disputes between us and the buyer are exclusively subject to the law of the Federal Republic of Germany decisive for legal relationships of domestic parties.
2. The invoicing of deliveries from one EU member state to another is subject to the VAT regulations of the 6th Accounting Directive of the European Community as amended from time to time unless national law determines otherwise in keeping with the 6th EC Accounting Directive. Insofar as VAT is to be collected from us, the buyer also owes the respective VAT in addition to the agreed (net) purchase price.

III. Additional provisions for subcontracts

Subcontracts are supplementarily and/or constraintingly also subject to the following conditions:

1. The ordering party is required to deliver the material to be processed and all the technical documents required for the processing in time and at its own expense.
 2. The material to be processed needs to be flawless and conform with the stated values. It must be free from flaws that complicate the processing and needs to have the normal additions for the intended processing.
 3. All extra costs and damages arising from the material not conforming with no. 2 (e.g. if porosity, sand inclusions, brittleness, hardness or other circumstances make the processing more expensive) will be invoiced additionally. This also applies to extra costs and damages owed to inadequate technical documents (no. 1).
- If the material becomes unusable for one of these reasons or otherwise without our fault, we are additionally entitled to compensation for our services provided up to the discovery of the flaw.
4. We will perform the assumed tasks diligently. We accept no liability for damages or delays attributable to flaws of the material, errors in the technical documents or other information provided, or warping of the piece during or after the processing.
- In the event of justified complaints being received in due time and form, we will only meet our obligation by touching up. If the material becomes unusable through our fault, we will cover the costs outlay by us up to the discovery of the flaw. We are also willing to process replacement material that has been delivered to us free of charge in keeping with the provisions of this contract.
5. Unless otherwise agreed, scrap, shavings and other wastes become our property.