Standard Terms of Sale, Delivery, Performance and Payment of Riva Stahl GmbH

Intertek LAMPERTHEIM

Intertek HES/BES Gmbh

Contact Sales: Riva Stahl GmbH - Wolfgang-Küntscher-Str. 18
D-16761 Hennigsdorf - **Tel:** +49 3302.806.0
Email Reinforcing steel: verkauf.rivastahl@rivagroup.com
Email Quality steel: sales.quality@rivagroup.com

Please note:

The following English translation of the German original version is for convenience only and therefore legally not binding. The terminology and language and thus the legal meaning of the English translation may differ from the German original version as a result of this translation. The German original version is incorporated in the agreement and therefore applies in case of all discrepancies between the German original version and the English translation.

I. GENERAL PROVISIONS

1. The following terms apply to all our present and future deliveries and performance that we provide to entrepreneurs (§ 14 BGB [German Civil Code]), legal persons under public law and special funds under public law. They apply to all future business with the buyer even if they are not explicitly referred to in individual cases.
2. We do not recognize any opposing or deviating terms of the buyer, unless we have explicitly agreed to their validity in writing. Our terms shall apply even if we deliver to the buyer without any reservation fully aware of opposing or deviating terms of the buyer.
3. The buyer may assign his claims against us to third parties only with our explicit prior approval. § 354a HGB [German Commercial Code] remains unaffected.
4. In accordance with § 33 BDSG [German Data Protection Law], or in accordance with art. 12 of EU General Data Protection Regulation, the attention of the buyer is drawn to the fact that his data will be stored by us. The processing of the data is undertaken in compliance with the German BDSG or the EU General Data Protection Regulation.
5. If single provisions of these terms are ineffective, this shall not affect the effectiveness of the remaining provisions. In this case, the ineffective provision is replaced by an existing provision customary in the trade, or in the absence of such provision by the corresponding statutory provision.
6. The entire legal relationship with the buyer is governed exclusively by German law, excluding the UN Convention on Contracts for the International Sale of Goods (CISG). As far as the buyer is an entrepreneur, a legal person under public law or a special fund under public law, our registered place of business is the place of exclusive jurisdiction. Nevertheless, we are also entitled to sue the buyer at his place of general jurisdiction.

II. OFFERS AND ORDER CONFIRMATIONS

1. Our offers are subject to change as to quantity, price and delivery period. Orders are only binding on us if and insofar as we have issued a written order confirmation or declared the acceptance by delivery. **In particular, our employees, insofar as they are not authorized to do so, are not entitled to make verbal subsidiary agreements, or to make verbal promises, or to give assurances, or to reach verbal agreements as to amendments of the contract. Such agreements, promises and assurances only oblige us after a corresponding written amendment to our order confirmation.**
2. Technical and design deviations from the descriptions and details given in brochures, catalogues and written documents, as well as changes in models, construction designs and material in the course of technical progress remain reserved, without this being able to derive any rights against us. This does not apply to specifications individually agreed with the buyer.
3. We reserve ownership rights and copyrights to illustrations, drawings, calculations and other documents. These must not be made accessible to third parties, unless we have previously given our explicit consent in each case.

III. PRICES AND PAYMENT

1. Our prices are net prices and apply, unless otherwise agreed, to deliveries in accordance with section IV, no. 8, plus the value added tax applicable on the day of delivery.
2. If delivery "free domicile" or "free construction site" is agreed, in the event that transportation costs at the time of delivery have considerably increased as compared to the market conditions at the time of conclusion of contract, we are entitled to increase the purchase price by the amount of the additional transportation costs.
3. If there are more than six weeks between the conclusion of the contract and the agreed delivery date for the entire delivery or parts thereof, and if cost increases occur for the delivery item after conclusion of contract, particularly due to price increases by our prior suppliers, we are entitled to increase the price by an appropriate amount (i.e. to the extent of the increase in our purchase costs) for those parts of the entire delivery that are scheduled for delivery after the expiration of six weeks.
4. Unless otherwise agreed, the receivables from our invoices are due on the 15th of the month that follows the delivery. Payment must be made at the due date net cash without any deduction, particularly without deduction of cash discount or of payment transaction costs. After the due date and receipt of the invoice, we are entitled to charge due date interest of 5 % per annum. In case of default of payment, we are entitled to demand default interest to the statutory amount (§ 288 (2) BGB). If we are able to prove a higher damage caused by default, we are entitled to claim this damage as well.
5. We are entitled to first credit payments against the buyer's older debt. If incurred costs and interest, we are also entitled to first credit payments against the costs, then against the interest and finally against the primary debt.
6. If the buyer is in default of payment of two or more invoices, or if he declares that he ceases payments, or if there are other serious circumstances that substantially question the buyer's creditworthiness, we are entitled to declare due the entire remaining debt.
7. The buyer is only entitled to rights of retention (including the rights according to § 369 HGB) if his counterclaims are established finally and non-appealable, are uncontested or are acknowledged by us. This also applies with regard to his rights of set-off, even if the buyer's counterclaims are in a close reciprocal relation (synallagma) with our main claim, such as, in particular, in regards to the buyer's counterclaims in the event of defective delivery.
8. Payments via bills of exchange or bank receipts will not be accepted.

IV. DELIVERY, DELIVERY DATES, PASSING OF RISK, DAMAGE IN TRANSIT

1. Delivery dates are non-binding, unless they have been explicitly agreed as binding.
2. Our delivery obligation is subject to the complete, correct and timely self-delivery, provided that we obtain the goods as a whole or components of the goods from a subcontractor. This does not apply if the non-delivery or delay is our fault.
3. Compliance with delivery periods and dates requires the performance of the buyer's contractual obligations in good time. The delivery period begins after clarification of all details of the execution of the order and receipt of all documents necessary for the execution of the order and other details to be provided by the buyer and, if agreed, after receipt of a corresponding down payment. The delivery period is also deemed to have been complied with if the goods leave our factory or the specified dispatch station at the agreed time, or if the readiness for dispatch has been notified to the buyer but the goods cannot be dispatched in good time for reasons for which we are not responsible. The same applies to delivery dates.
4. The delivery period and the delivery dates are appropriately postponed during measures in the context of labor disputes and on the occurrence of extraordinary and unforeseeable events beyond our sphere of influence and for which we are not responsible, insofar as such events impede the completion or delivery of the goods (e.g. war, the risk of war, governmental interference including monetary and trade policy measures, fire, lack of raw materials, lack of energy and other business disruptions for which we are not responsible). This also applies if such circumstances occur at our suppliers. This also applies if we are in default of delivery– in this case accordingly to additional periods of time imposed on us– and if the aforementioned circumstances already existed before the conclusion of contract, but were unknown to us without our fault. We will immediately notify the buyer about events of the above mentioned kind. If the delays in delivery resulting from such events are due for more than two months, both parties are entitled to withdraw from the contract. However, the buyer can not withdraw until we do not declare at his request within a week's period whether we want to withdraw or to deliver within two weeks. The same right of withdrawal arises irrespective of the aforementioned period if the performance of the contract has become unreasonable for one of the parties with regard to the delay that has occurred.
5. In addition, we are entitled to withdraw from concluded contracts if, as a result of catastrophes, war events or comparable serious reasons beyond our sphere of influence, the procurement of goods has become considerably more difficult than at the time of conclusion of contract. In any case, it is regarded as a considerable difficulty if the market price of the object of purchase has risen by 25 % between the conclusion of the respective sales contract and the agreed delivery date.
6. If the buyer defaults on payment of an invoice by more than two weeks, or if an application for the commencement of insolvency proceedings relating to the buyer's assets is filed, or if the buyer has initiated an out-of-court procedure for debt regulation, or has discontinued his payments, or if there are any other circumstances that significantly reduce the creditworthiness of the buyer and thereby endanger our claim for consideration owed to us, we are entitled to demand security for outstanding deliveries by advance payment or bank guarantee (at the choice of the buyer), imposing a period of at least a week, and to refuse our performance until the performance of the security. After effectless expiry of this period and an appropriate additional period, we are further entitled to withdraw from this contract and to demand damages.
7. Even if a period of time according to the calendar has been specified for our performance, or if a time following a previous event can be calculated according to the calendar, default only occurs after receipt of a written warning notice. If we default on delivery, the buyer must set us an appropriate additional period. This must amount to at least two weeks.
8. Unless otherwise agreed, delivery is "ex works" or at the dispatch station specified by us (EXW – Incoterms 2010), without loading, packaging and without rust protection. The buyer's obligation to bear the costs also covers any additional transport costs due to dispatch difficulties, the charges for unloading and any downtimes.

9. If delivery is agreed, this and the packaging are carried out at our choice at the expense of the buyer without export license (FCA – Incoterms 2010). The packaging is not being taken back. With the handing over of the goods to the forwarding agent, carrier or another - even own - carriage person, the risk of destruction or of deterioration passes to the buyer. This also applies to delivery "free domicile" or "free construction site". An insurance of the goods against damage in transit only takes place at the explicit written request of the buyer and at the buyer's expense. If delivery is delayed as a result of circumstances for which we are not responsible the risk passes to the buyer already upon notification of readiness for dispatch. If the buyer does not unload the goods immediately, we are entitled to have the goods unloaded at the risk of the buyer, if these are suitable for unloading, or to charge the buyer with the costs of the delivery attempted without effect. The buyer must immediately notify us any damage in transit, at the latest within one week after receipt of the delivery item, or in case of hidden damage upon its discovery, even if we are not responsible for the transportation.
10. The buyer is obliged to accept partial deliveries to a reasonable extent. In cases of delivery „ex works", the buyer also is in default in acceptance if the delivery is offered by us only in writing and the other requirements for default in acceptance are fulfilled. For deliveries on call order, the call within the agreed period is an obligation within the meaning of § 276 and § 280 et sqq. BGB.
11. Call orders are accepted subject to production possibilities and the available cargo hold.
12. Tie wire is not suitable as a slinging mean or for the handling of the coil, but serves solely to hold the material together in case the band iron strap breaks. The use of suitable slinging means according to Directive 2006/42/EC and potential subsequent amendments is recommended.

V. RETENTION OF TITLE

1. Until full payment of our purchase price claim including any ancillary claims as well as all other claims of ours against the buyer, the goods delivered remain our ownership ("reserved goods"). This retention of title remains valid even if individual claims of ours have been included in a current account and the balance is drawn and acknowledged, so that it secures the balance.
2. If the reserved goods delivered by us are processed by the buyer, this processing is carried out for us as producer within the meaning of § 950 BGB.
3. If our reserved goods are combined or intermixed with the buyer's own goods or with external reserved goods or processed together with such goods, we acquire co-ownership of the new chattel or of the intermixed stock in proportion of the value of our reserved goods to that of the other goods at the time of the combination, intermixture or processing. If the buyer acquires sole ownership of the new chattel, we agree with the buyer that he grants us co-ownership of the new chattel in proportion of the value of our reserved goods to the processed, combined or intermixed reserved goods, and that the buyer keeps the new chattel in safe custody for us free of charge. We make no claim to the increase in value resulting from the combination, intermixture or processing.
4. The goods in our ownership referred to in section V. and those in our co-ownership referred to in section V.3 secure our claims in the same way as the reserved goods originally delivered by us.
5. We are entitled to revoke the buyer's authority to combine, intermix or process our reserved goods if the buyer defaults on payment to us.
6. The buyer is authorized to resell our reserved goods as well as the goods in our ownership in accordance with section V.2 and those in our co-ownership in accordance with section V.3 only in the context of his usual business transactions and only on condition that the purchase price claim from the resale passes to us pursuant to V.7. This authorization expires if the buyer defaults on payment to us, or files an application for the commencement of insolvency proceedings, or if there is a reason for insolvency. The buyer is not entitled to other disposals of the reserved goods as well as the goods in our ownership in accordance with section V.2 and those in our co-ownership in accordance with section V.3, particularly to a pledge or to a transfer by way of security.
7. The buyer hereby assigns his claims to us together with all ancillary rights arising from the resale of our reserved goods as well as the goods in our ownership in accordance with section V.2 and those in our co-ownership in accordance with section V.3 as security for all claims due to us against the buyer at the time of resale. We hereby accept the aforementioned assignment. In the case of the resale of the goods in our co-ownership in accordance with section V.3, however, only the part of the claim that corresponds to the value of our co-ownership share shall be deemed assigned.
8. The buyer is authorized to assign the claim arising from the resale of the reserved goods to third parties within the scope of real factoring, provided that this assignment is notified to us in advance and that the factoring proceeds amount to at least the value of our reserved goods or the goods in our ownership in accordance with section V.2 or those in our co-ownership in accordance with section V.3., from whose resale the respective claim originates. Section V.6, sentence 2 applies accordingly. The buyer hereby assigns to us the claims against the factor arising from the sale of the claims assigned to us by way of security in accordance with section V.6; they serve as security for our claims, too. We hereby accept the aforementioned assignments.
9. If the realizable value of the claims assigned to us by way of security exceeds our claims against the buyer by more than 10%, we are obliged, at the request of the buyer, to release securities that exist beyond that.
10. The buyer is authorized to collect for us the claims assigned to by way of security in accordance with section V.6. Section V.6 sentence 2 applies accordingly. In this case we are authorized to notify the buyer's customer of the assignment on behalf of the buyer. The buyer is obliged to give us the information necessary for enforcement of our rights against his customers, in particular to name the customers and to hand over the necessary certificates and documents.
11. The buyer is obliged to sufficiently insure our reserved goods as well as the goods in our ownership in accordance with section V.2 and those in our co-ownership in accordance with section V.3 against loss and damage due to fire, theft, water or similar risks, and to provide us with proof of this insurance cover upon request. The buyer hereby assigns to us his claims for compensation which are due to him - if applicable, pro rata - against insurance companies or other liable persons. Any impairment of our reserved goods as well as the goods in our ownership in accordance with section V.2 and those in our co-ownership in accordance with section V.3 must be notified to us immediately as well as access to it by third parties.

12. If the resale authorization is extinguished, the buyer is obliged at our request to provide us with information about the stock of our reserved goods as well as the goods in our ownership in accordance with section V.2 and those in our co-ownership in accordance with section V.3, and to return the reserved goods at our demand. Section 449 (2) BGB is waived insofar. To enforce our claim for return, we are also entitled, after prior notice and setting a period, to enter the buyer's plant and to take the reserved goods.
13. Furthermore, we are entitled to realize the returned reserved goods to satisfy our claims as soon as we have either withdrawn from the contract or the requirements for the enforcement of damages in lieu of performance are fulfilled.
14. In the event that on delivery or movement of the goods abroad the agreed retention of title according to the law then applicable to the goods does not persist with the same effect as under German law and the aforementioned provisions, the goods in any case remain our ownership until full payment of the purchase price. In the event that also this provision is ineffective under the applicable law, a provision applies that offers us security for the goods or any other security for our claims, which comes as close as possible to the security within the meaning of the provisions of this section V and which is effective under the law applicable to the goods. The buyer is obliged under the present provisions to take all necessary or appropriate measures in this regard at his own expense, particularly to make corresponding declarations to third parties or to authorities and to make any registrations required in order to obtain as quickly as possible the security under the law applicable to the goods. The buyer is obliged to keep us informed about the progress made in obtaining this security.
15. If the buyer is a member of a purchasing association, the following applies to the retention of title:
    - If the purchasing association assumes the del credere liability for its members, the provisions of this section V. shall apply with the provisio that the buyer only obtains the ownership of the reserved goods if he has paid in full the purchase price claim not to us but to the purchasing association;
    - If the purchasing association, in addition to the del credere liability, also assumes an obligation to central settlement, we transfer the ownership of the reserved goods to the purchasing association subject to the condition precedent that the purchase price is paid in full by the purchasing association. The transfer is replaced by the assignment of our rights under section V.2 to V.14 as well as of any claims for return of the reserved goods against transport businesses and the buyer to the purchasing association - subject to the condition precedent of full purchase price payment by the purchasing association. Section V.1, sentence 2 is excluded in this respect.

VI. QUALITY OF THE GOODS

1. Details about our goods are quality specifications, unless they are explicitly designated as guarantees.
2. Deviations as well as excess and short deliveries customary in trade are permissible and do not constitute defects. Unless otherwise agreed, flash rust does not constitute a defect.
3. As regards weights, the weight determination made by the producer is decisive. The proof is provided by submission of the weighing sheet.
4. Details and information on the construction design, suitability, use and processing, cleaning and treatment of our goods do not release the buyer from his own inspections and tests. The buyer alone is responsible for observing statutory, official and professional association's regulations when using our goods.

VII. LIABILITY FOR DEFECTS

1. The buyer's claims for defects presuppose that he has complied fully and in good time with his duties of inspection and notice in accordance with section 377 HGB. Notice of defects must be made in writing.
2. If there is a defect in the goods, we are – at our choice - entitled to demand cure by remedying the defect or by replacement delivery.
3. If the cure chosen by us fails, or if it is unreasonable for the buyer, or if it is refused by us, or if it is delayed beyond an appropriate period for reasons for which we are responsible, the buyer can - regardless of any claims for damages - withdraw from the contract or reduce the purchase price.
4. The limitation period for claims for defects that are not aimed at damages is one year as from delivery. Notwithstanding this, the limitation period is five years from delivery in the case of a chattel that has been used for a building in accordance with its usual way of use and has caused defectiveness of the building (section 438 (1) no. 2 BGB).
5. Insofar as we are liable for intent or breach of guarantees, the aforementioned restrictions on limitation do not apply. Insofar as we are liable in the context of the recourse of the entrepreneur, the provisions of sections 478, 479 BGB apply with priority.
6. For goods that have been sold by us as declassified material, the specified reasons for declassification, and restrictions on use and defects that the buyer usually has to expect, belong to the quality of the goods and do not trigger any claims for material defects. The sale of II a goods is expected to result in considerable restrictions on use as well as defects.
7. Insofar as claims for defects are aimed at damages (including reimbursement of futile expenses), the provisions of section VIII also apply.

VIII. LIMITATION OF CLAIMS FOR DAMAGES

1. Claims to damages against us or our vicarious agents are excluded in cases of slightly negligent breach of non-fundamental contractual obligations; fundamental contractual obligations are obligations whose fulfillment makes the proper performance of the contract possible in the first place and on compliance with which the buyer may regularly rely. In cases of other claims for damages not intentional breaches of duty by us or our vicarious agents, liability is limited to contract-typical, foreseeable damage.
2. In cases of slightly negligent breach of duty, claims for damages against us or our vicarious agents are subject to a limitation period of a year. This does not apply to claims for damages due to a defect in the cases of section 438 (1) no. 2 BGB and of section 634a (1) no. 2 BGB.
3. The aforementioned exclusions of liability and limitations of liability do not apply in the case of intent, breach of guarantees, or injury to life, limb or health.
4. If we are liable under the German Product Liability Act for damage to property or personal injury caused by a product defect, the provisions of the German Product Liability Act apply with priority. For an internal compensation according to section 5 sentence 2 German Product Liability Act the aforementioned regulations remain applicable.