

# Terms and Conditions of Sale and Delivery (as of April 2022)

## I. Application

1. The following terms and conditions shall apply to all deliveries and services provided by the Supplier (ESSER-WERKE GmbH & Co. KG, Zum Puddelhammer 25, 59581 Warstein) to businesses (Section 14 BGB [German Civil Code]), irrespective of whether the individual case pertains to a contract of sale, a contract for work and services or any other contractual relationship.
2. They shall furthermore apply to future deliveries and services provided by the Supplier, including any deliveries of spare parts, even if their validity is not expressly agreed upon again.
3. Deviating and/or supplementary general terms and conditions of the customer shall not apply. These are hereby objected to. They shall only apply if and to the extent that the Supplier has expressly agreed to all of them or parts thereof.

## II. Conclusion of contract, amendments, assignment

1. The documents that are part of the offer (e.g., illustrations, drawings) as well as information on scope of delivery, appearance, performance, dimensions, weights, consumption of operating materials, operating costs, etc. are only approximate unless they are expressly designated as binding. The Supplier reserves the title and copyrights to cost estimates, drawings and other documents. They may not be made available to third parties and must be returned upon request.
2. The contract is concluded when the Supplier has expressly confirmed acceptance of the order or has commenced delivery or performance. If the Supplier submitted an offer that is limited in time, the contract shall be concluded upon the Purchaser's timely, express acceptance of the offer.
3. The Purchaser may not assign its rights or claims under the contract. Section 354a HGB [German Commercial Code] shall remain unaffected, however.

## III. Prices

1. The prices are to be understood as being ex works including loading at the factory, but excluding packaging and the statutory value added tax in accordance with the relevant provisions of the country of delivery or performance. Unless the Supplier's remuneration has been expressly agreed upon, the Supplier's prices valid on the delivery date shall apply.
2. Engineering services, installation and commissioning will be charged separately. Depending on what was agreed upon, they may be invoiced on a flat-rate basis or on the basis of the actual expense plus travel expenses, board and lodging costs, overtime, Sunday and public holiday surcharges.
3. Price changes are permitted if there are more than 6 months between the conclusion of the contract and the agreed delivery date. In such cases, the Supplier shall be entitled to adjust the price in such a way that the new price is equal to the originally agreed price as the price of the delivery and service according to the price list valid on the delivery date is equal to the price of the delivery according to the price list valid on the date the contract was concluded. With regard to other deliveries and services not listed in a price list, the Supplier shall be entitled to adjust the price appropriately and in line with the circumstances.
4. If there are more than 60 calendar days between the conclusion of the contract and the delivery/service provision and if the following price-determining factors change in total by more than 10% on average, based on the indices provided below on the date the contract was concluded and the date of the delivery/service provision, the Supplier shall be entitled to unilaterally make the adjustment set out below:

- Steel price for the unalloyed construction steel S355J2 (1.0577), flat 3-10 mm, 25-100 tons (<https://www.stahl-kompakt.de>),

- Steel price for the Q & T steel C60 (1.0601), flat 3-10 mm, 25-100 tons (<https://www.stahl-kompakt.de>),
- Energy price index of the Federal Statistical Office (Destatis) for electricity & gas to non-households.

The price adjustment is 60 % of the average rate of increase of the factors shown above. It shall be shown in the invoice on the basis of the provision above.

5. If the Supplier is prepared to exchange the goods at the Purchaser's request, the Supplier shall be entitled, without prejudice to any agreements to the contrary, to charge the costs incurred, but at least the amount of the reduction in value due to deterioration and use plus 10.0% of the agreed price of the originally agreed delivery item as compensation for the expenses incurred by the Supplier as a result of the exchange. The Supplier may not demand the aforementioned lump-sum for its costs if the Purchaser can show that the Supplier incurred no or only minor damages or expenses.

## IV. Payment, default in payment, set-off, retention

1. Unless otherwise agreed, deliveries of machinery are due for payment within 7 days of delivery, spare parts within 30 days and services within 14 days of the invoice date without deduction.
2. All receivables shall become due immediately - even in the event of extended terms of payment or other payment deferrals - as soon as the Purchaser is in default with the fulfillment of even part of its obligations toward the Supplier for more than 5 working days or if circumstances arise that substantially reduce the Purchaser's creditworthiness (e.g., deterioration of assets, delays or suspension of payments, over-indebtedness, a downgrading of its creditworthiness by commercial credit insurers, bill and cheque protests, an application for the opening of insolvency proceedings or the opening or denial thereof). In this case, the Supplier can refuse all deliveries and services and demand the provision of appropriate securities for its receivables.
3. Payment by bill of exchange requires a special express agreement. Bills of exchange and cheques are only accepted on account of payment. Any collection and discount charges shall be borne by the Purchaser. No discounts shall be granted for payment by bill of exchange and for overdue payments, even if previously agreed upon otherwise.
4. The Purchaser may only offset claims of the Supplier against undisputed or legally established claims or claims arising from the same contractual relationship. The Purchaser shall only have a right of retention if its counterclaim is based on the same contractual relationship and is undisputed or has been established by a court of law. However, The Purchaser's right to withhold a reasonable part of the purchase price due to defects in the Supplier's performance shall remain unaffected.
5. If the Purchaser is in default of payment, the Supplier's claims shall bear interest at a rate of 9 percentage points above the base rate. The Supplier's claim for compensation for further damages shall remain unaffected.
6. If the Purchaser's assets deteriorate within the meaning of clause IV. 2., the Supplier may withdraw from the relevant contract after having set a reasonable deadline for the provision of appropriate securities to no avail. Further legal claims of the Supplier - e.g., compensation for damages - shall remain unaffected. The Purchaser shall have no claim for damages.

## V. Delivery period, partial performance, default in acceptance, Supplier's withdrawal, claims for damages by the Supplier

1. Agreed delivery dates shall be non-binding unless their binding nature was expressly agreed upon. Delivery and assembly periods shall not commence until the Supplier and the Purchaser have agreed on all details of the execution and all terms and conditions of the transaction and not prior to the effective conclusion of the contract. They shall be suspended while the Purchaser is in arrears with the fulfillment of its cooperation obligations under this contract (e.g., provision of documents, supplies, approvals, releases) or with an agreed down payment.
2. The delivery period shall be deemed to have been complied with if, when the delivery period has ended, the delivery item has left the factory or a notification of readiness for dispatch has been provided.

3. If the Supplier's performance is delayed, the Supplier shall nevertheless not be in default as long as said delay is due to circumstances which the Supplier could not reasonably have foreseen and prevented by exercising due care and could not have remedied by taking reasonable measures.
4. The Supplier shall be entitled to withhold its performance as long as the Purchaser fails to fulfil its obligations towards the Supplier under this or any other contract or on any other legal ground.
5. Partial performance is permitted insofar as it is reasonable for the Purchaser. It may be charged separately.
6. If the terms of payment are not adhered to, if the delivery is not accepted in due time or if its acceptance is refused or if the agreed securities are not provided, the Supplier shall be entitled to withdraw from the contract after having set a reasonable grace period to no avail. If the Purchaser is required to pay damages to the Supplier in such cases, the Supplier may claim 25.0% of the order value in the case of series products and 75.0% of the order value in the case of custom-made products as damages without furnishing proof, unless the Purchaser can prove that no damages or only minor damages were incurred. The right to claim higher damages upon substantiation shall be reserved.
7. If the shipment is delayed at the Purchaser's request, the Supplier may invoice either the storage and maintenance costs actually incurred or a flat rate of 0.5% of the invoiced amount for each month; the latter shall not apply, however, if the Purchaser can prove that the Supplier incurred no or only minor damages or expenses. The Purchaser's payment obligation shall remain unaffected.

## VI. Assumption of risk, shipment and receipt

1. The risk shall pass to the Purchaser at the latest upon shipment of the delivery item. This shall likewise apply to a partial performance or if the Supplier has assumed the shipping or installation costs or has effected the delivery itself.
2. If the delivery, shipment or acceptance of the delivery item by the Purchaser is delayed, all risks - including the risk of deterioration or loss of the delivery item, as well as all risks emanating from the Purchaser itself - shall pass to the Purchaser upon notification of readiness for shipment or notification of completion. This shall not apply if the Supplier is responsible for the delay.
3. The shipment shall only be insured to the agreed extent following an express agreement. The Purchaser shall bear the cost for the insurance.
4. The Purchaser shall be liable for all damage culpably caused by the Purchaser during or before the acceptance of the delivery item (e.g., testing, acceptance to be carried out, etc.).
5. Delivered items are to be accepted by the Purchaser without prejudice to its rights, even if they have defects.

## VII. Notice of defects, warranty, warranty period

1. The Purchaser shall inspect the delivery item immediately upon receipt and promptly notify the Supplier of any defects in writing. Furthermore, the Purchaser shall inspect the delivery item for defects and, in particular, for safety and operational readiness before each start-up. During use, the delivery item must constantly be monitored with regard to safety and defects. If there is even the slightest concern about the operational readiness or safety, the item must not be used or must be shut down immediately. The Supplier shall be informed immediately in writing, stating the concerns or the defect in the context of a notice of defect. The Purchaser shall give the Supplier the necessary time and opportunity to make any necessary repairs and replacement deliveries. Otherwise, the Supplier shall no longer be liable for the consequences arising as a result.
2. If the Supplier's performance is defective at the time the risk is transferred, the Supplier shall remedy the defect or deliver a defect-free item in exchange for the defective item at the Supplier's discretion. Replaced parts shall become the Supplier's property. If subsequent performance with regard to a defect is not possible, has conclusively failed, is unreasonable for the Purchaser, or if the Supplier has refused both types of subsequent performance, or if a reasonable grace period granted to the Supplier for subsequent performance has expired to no

avail, the Purchaser may reduce the Supplier's remuneration or, at its option, withdraw from the contract and, if applicable, claim damages. However, if the defect is only insignificant, the Purchaser shall only be entitled to reduce the remuneration.

3. Should the Supplier have fraudulently concealed a defect or assumed a guarantee for the quality of the item, the statutory provisions shall apply.
4. The Supplier assumes no warranty or liability for damages, in particular in the following cases: Unsuitable or improper use, faulty assembly or commissioning by the Purchaser or a third parties, natural wear and tear, faulty or negligent handling, improper maintenance, excessive stress, unsuitable operating materials or replacement materials, defective work, unsuitable foundation soil, and chemical, electro-technical/electronic or electrical influences. This exclusion shall not apply, however, if the Supplier is responsible for the damage in accordance with the provision in VIII. 5.
5. The Supplier does not provide any warranty for material supplied by the Purchaser, material corresponding to specifications given by the Purchaser or for designs provided by the Purchaser.

The Supplier shall also not be liable or liable to pay compensation in particular for the following measures and actions of the Purchaser or third parties and their consequences: Improper rectification, modification of the delivery item without the Supplier's prior consent, installation of parts, in particular spare parts, which do not originate from the Supplier or which were not expressly approved for installation, as well as non-compliance with the operating instructions.

6. The Seller does not provide any warranty due to material defects with regard to the sale of used machinery, equipment or parts. The Supplier does not guarantee any properties and points out that used machinery and parts often do not have the same properties - also with regard to their performance - as newly manufactured machinery and parts.
7. The Purchaser's claims to supplementary performance as well as any claims for damages or reimbursement of expenses due to defects shall become time-barred one year from the delivery of the goods in the case of deliveries and one year from acceptance or - if acceptance is not required - from the end of the installation work in the case of installation work. Should the Supplier have fraudulently concealed a defect or assumed a guarantee for the quality of the item, the statutory provisions shall apply for any claims of the Purchaser in this connection. The statutory provision shall also apply to the limitation period for any claims for damages by the Purchaser due to defects if the Supplier is guilty of intent or gross negligence or if the claim for damages is based on an injury to life, body or health.
8. All further claims of the Purchaser, in particular for damages, are excluded, including with regard to damage that has not occurred to the delivery item itself. Clause VIII. 5. shall apply accordingly.

## VIII. Force majeure, Supplier's liability

1. For the purposes of the following provisions, the term "Force Majeure" refers the occurrence of any event or circumstance that prevents the Supplier from meeting one or more of its obligations under the contract if and to the extent that the Supplier can prove that (a) it is beyond the Supplier's reasonable control, (b) it could not reasonably have been foreseen at the time the contract was entered into and (c) the effects of the hindrances could not reasonably have been avoided or overcome by the Supplier.
2. Unless the Purchaser proves otherwise, the following events affecting the Supplier or third parties acting on the Supplier's behalf shall be presumed to meet the conditions for the presumption of force majeure referred to in clause 1: War (declared or undeclared), large-scale military mobilisation, civil war, riot, rebellion and revolution, military or other seizure of power, insurrection, acts of terrorism, sabotage or piracy, currency and trade restrictions, embargo, sanctions, pandemic or epidemic, official orders as a result of an epidemic or pandemic, natural disaster or extreme natural event, boycott, strike and lawful lockout, unlawful occupation of factories and buildings.
3. The Supplier shall immediately notify the Purchaser in text form of the event giving rise to the force majeure as soon as it becomes known.
4. In the event of force majeure and its immediate notification, the parties shall be released from their duty to fulfil the respective contractual obligations and from any liability for damages or any other contractual

remedy for breach of contract for the duration of the force majeure from the time the Purchaser receives the notification.

5. If the effect of the hindrance or event constituting force majeure is temporary, the consequences set out in clause 4 shall apply only for as long as the respective hindrance or event prevents the Supplier from fulfilling its contractual obligations. If the effects of the force majeure persist for more than 100 days from the date of receipt of the notification (clause 3), both parties shall be entitled to terminate the contract.
6. Any claims for damages on the part of the Purchaser are excluded irrespective of the legal grounds. This shall not apply in the event of a fraudulent concealment of a defect, non-compliance with a quality guarantee, an injury to life, limb or health and/or in the event of an intentional or grossly negligent breach of duty by the Supplier or in the event of a breach of duties, which are a prerequisite for the proper performance of the contract and which the Purchaser regularly relies on to be fulfilled (so-called essential contractual duties / cardinal duties). Claims under the Product Liability Act shall not be affected by this limitation of liability either. This limitation of liability applies equally to breaches of duty by the Supplier's executive bodies and vicarious agents.
7. The claim for damages for the breach of essential contractual obligations is limited to the foreseeable damage typical for the contract, unless there is intent or gross negligence involved or the Supplier is liable for an injury to life, body or health.
8. The above limitations of liability apply equally to claims to a reimbursement of futile expenses (Section 284 BGB). A change in the burden of proof to the detriment of the Purchaser is not associated with the above provisions.
9. The Purchaser's claims for damages against the Supplier arising from a breach of contractual obligations and from tortious acts committed in the course of the contractual performance shall become time-barred at the latest one year after the end of the year in which the claim arose and the Purchaser became aware of the circumstances giving rise to the claim and of the identity of the liable party or should have become aware thereof without gross negligence. This shall also apply to the Purchaser's claims for damages against the Supplier on any other legal grounds, including claims for damages arising from the breach of pre-contractual obligations and from tortious acts committed during the initiation or conclusion of the contract. If the liable party is guilty of intent or gross negligence, the statutory provision shall apply. The statutory provision shall likewise apply to claims for damages based on an intentional or negligent injury to life, limb or health.
10. Clause 9 above shall apply mutatis mutandis to the limitation of the Purchaser's claims against the Supplier's legal representatives and its employees.

## IX. Retention of title

1. The delivery item shall remain the Supplier's property until the agreed price has been paid in full and all other claims, including future claims arising from the business relationship with the Purchaser, have been settled. If, in connection with the payment of the purchase price, a liability of the Supplier under a bill of exchange is established, the retention of title shall not expire until the Purchaser has honoured all bills of exchange in full.
2. The Purchaser hereby assigns to the Supplier any and all claims arising from the resale of the delivery item in the amount of the value of the delivery item with all ancillary rights. The Purchaser shall be authorised to collect the claims. The Supplier's authority to collect the claims itself shall remain unaffected by this.
3. The Supplier undertakes to release securities of its choice at the Purchaser's request insofar as the realisable value of said securities exceeds the total of its claims from the business relationship by more than 10%.
4. As long as the Purchaser meets its obligations toward the Supplier, it shall be entitled to dispose of the delivery item in the ordinary course of business and subject to the retention of title, insofar as the claims under clause 2 are effectively transferred to the Supplier. Extraordinary dispositions such as pledging, transfer by way of security or any

assignment are not permitted. The Supplier shall be notified immediately in writing of any third-party seizure of the delivery item or of any claims assigned to the Supplier, in particular attachments.

5. The delivery item shall be worked on and/or processed for the Supplier as a manufacturer within the meaning of Section 950 BGB without obligating the Supplier in any way. The processed goods shall be deemed to be goods subject to retention of title within the meaning of clause 1. If the goods subject to retention of title are processed, combined and mixed with other goods by the Purchaser, the Supplier shall be entitled to a co-ownership of the new item in the ratio of the invoiced value of the goods subject to retention of title to the invoiced value of the other goods used. If our ownership lapses as a result of said combining or mixing, the Purchaser hereby transfers to the Supplier the ownership rights to which the Purchaser is entitled in the new good or item to the extent of the invoice value of the goods subject to retention of title and shall keep them in safe custody for the Supplier free of charge. The co-ownership rights arising hereunder shall be deemed to be goods subject to retention of title within the meaning of clause 1. If the goods subject to retention of title are combined by the Purchaser with real property pursuant to Section 946 BGB, the Purchaser shall, without any further special declarations being required, assign to the Supplier by way of security its claim to which it is entitled as remuneration for the combination, together with all ancillary rights, in the amount of the ratio of the value of the combined goods subject to retention of title to the other goods subject to retention of title or to the value of its total performance rendered at the time of the combination.
6. During the period of retention of title, the Purchaser shall in principle be entitled to the possession and proper use of the delivery item. However, in the event of a breach of contract by the Purchaser - in particular if the Purchaser is in arrears with its payments - and in the cases of clause IV. 2, the Supplier may take possession of the delivery item and revoke the authorisation to collect the claims arising from the resale. The Purchaser shall be required to surrender the goods - to the exclusion of any rights of retention. All costs associated with the exploitation of said goods shall be borne by the Purchaser. The supplier shall be entitled to sell the goods on the open market. At the Supplier's request, the Purchaser shall immediately provide the Supplier with a list of the claims assigned to the Supplier in accordance with clause 2 as well as all other information and documents required to assert the rights to which the Supplier is entitled and notify its debtors of said assignment.
7. During the period of retention of title, the Purchaser shall keep the delivery item in proper condition and have all maintenance and repair work required by the Supplier carried out without delay - except in emergencies - by the Supplier or by a workshop recognised by the Supplier.
8. The assertion of the retention of title as well as the seizure of the delivery item by the Supplier shall not be deemed a withdrawal from the contract.
9. If the retention of title or the assignment is not effective under the law of the country in which the goods are located, the security that comes closest to the retention of title or the assignment in that country shall be deemed agreed. If the Purchaser's cooperation is required in this regard, the Purchaser shall perform all legal acts necessary to establish and maintain such rights.

## X. Property rights

If the Supplier has taken into consideration drawings or models or samples or if the Supplier has to use parts provided by the Purchaser, the Purchaser shall be responsible for ensuring that no third-party property rights are infringed thereby. The Purchaser shall indemnify the Supplier against any third-party claims for the infringement of industrial property rights and shall reimburse the Supplier for any damages incurred as well as its costs and expenses. If the Purchaser is prohibited from manufacturing or delivering by a third party invoking an industrial property right, the Supplier shall be entitled to stop the work. In this case, the Supplier may withdraw from the contract, have its damages compensated and demand the reimbursement of its costs and expenses. The Purchaser shall not be obligated to indemnify, compensate for damages, costs or expenses pursuant to sentences 1 to 4 above if the Purchaser is not responsible for the infringement. However, any statutory claims and rights of the Supplier shall always remain unaffected.

## **XI. Software use**

1. Insofar as software is included in the scope of delivery, the Purchaser shall be granted a non-exclusive right to use the delivered software and its documentation. It is provided for the intended use on the delivery item. Use of the software on more than one system is prohibited.
2. The Purchaser may only reproduce, revise, translate or convert the software from the object code to the source code to the extent permitted by law (Sections 69 d) and e) UrhG [German Copyright Act]). The Purchaser undertakes to neither remove manufacturer's details - in particular copyright notices - nor to change them without the Supplier's prior express consent.
3. All other rights to the software and the documentation, including copies, shall remain with the Supplier or the software supplier. The granting of sub-licenses is not permitted.

## **XII. Choice of law, place of performance, place of jurisdiction, severability clause**

1. The law of the Federal Republic of Germany shall apply exclusively. These GTC are available in several languages. In the event of ambiguities, contradictions or questions of interpretation, the German language version of all contractual provisions shall prevail. The Uniform Laws on the International Sale of Goods (CISG) do not apply.
2. The place of fulfilment is 59581 Warstein.
3. The exclusive place of jurisdiction is the registered office of the Supplier.
4. Should one of the provisions of these Terms and Conditions of Sales and Delivery be wholly or partially invalid, this shall not affect the validity of the remaining provisions.



### **ESSER-WERKE GmbH & Co. KG**

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