

UTP Schweissmaterial, Zweigniederlassung der Böhler Schweisstechnik Deutschland GmbH

General Terms and Payment Conditions

(As of: July 2007)

Area of application

1. These terms of sale shall apply to companies, legal entities under public law and special funds under public law. Our deliveries and provision of services shall be made exclusively on the basis of the terms below. Our partner's terms of business which we have not explicitly accepted shall not be valid.

General provisions

2. The parties to the agreement shall individually confirm oral agreements in writing without delay.
3. Orders shall only become binding on receipt of an order confirmation.
4. The details and illustrations contained in the brochures and catalogues are standard industry approximate values unless we have expressly stated that they are binding.

Long-term and call-off purchase agreements, price adjustments

5. Unlimited agreements can be terminated with a period of notice of three months.
6. If in the case of long-term agreements (agreements with a term of more than 4 months and unlimited agreements), important changes to the wage, material or energy costs occur, each party to the agreement shall be entitled to demand negotiations regarding a suitable adjustment of the price taking these factors into consideration.
7. If a binding order quantity has not been agreed on, we shall base our calculation on the non-binding order quantity expected from the partner for a specific period (target quantity).
If the partner purchases less than the target quantity, we shall be entitled to increase the unit price correspondingly.
8. Unless otherwise agreed, binding quantities must be notified for call-up delivery agreements at least 2 months before the delivery date by call-up.

Extra costs which are caused by a delayed call-up or subsequent changes to the call-up with regard to the target or quantity by our partner shall be borne by said partner; our pricing is decisive.

Confidentiality

9. Each contractual partner shall use all documents and knowledge which it receives from the business relationship only for commonly pursued purposes and keep them confidential from third parties with the same care as its own corresponding documents and knowledge if the other contractual party has marked them as confidential or is interested in maintaining confidentiality.

This obligation starts from the first receipt of the documents or knowledge and ends 36 months after the end of the business relationship.

10. This obligation shall not apply to documents and knowledge which are generally known or which were already known on receipt without the partner being committed to confidentiality, or which were subsequently transferred by a third party entitled to pass them on or which were developed by the receiving contractual partner without the use of confidential documents or knowledge of the other contractual partner.

Drawings and descriptions

11. If one contractual partner provides the other one with documents about the goods to be delivered or their production, these documents shall remain the property of the contractual party who has submitted them.

Prices

12. Our prices are listed in euros and do not include VAT, packaging, freight, shipping and insurance.

Terms of payment

13. All invoices are due within 30 days of the invoice date.
14. If we undisputedly have delivered partially incorrect goods our partner is nevertheless committed to pay for the correct part of the delivery unless the partial delivery is of no use to it. Furthermore, the partner can only offset with counter-claims which have been asserted as being res judicata or are undisputed.
15. In the event of the payment deadline being exceeded, we shall be entitled to charge default interest at the rate which our bank charges us for current account loans, at least however 8 percentage above the relevant basic interest rate of the European Central Bank.
16. In the event of a default in payment, after informing our partner in writing, we can stop meeting our commitments until we have received payment.
17. Drafts and cheques shall only be accepted following prior agreement and only on account of performance and under the precondition that their discountability will be accepted. Discount charges shall be calculated from the date that the invoice amount is due. A guarantee for the punctual submission of the draft and cheque and for due protest is excluded.
18. If after the conclusion of the contract, it becomes evident that our payment claim is jeopardised through our partner's insufficient financial capacity, we can refuse the performance and set the partner an appropriate deadline in which it has to pay step by step in return for delivery or has to provide security. In the event of the partner refusing or once the deadline has expired without any resolution, we shall be entitled to withdraw from the agreement and claim damages.

Delivery

19. Unless otherwise agreed, we shall deliver "ex works". For meeting the delivery date or the delivery deadline the notification by us that the consignment is ready for shipping or collection is decisive.
20. The delivery deadline shall start with sending off our order confirmation and shall be extended accordingly if the preconditions of figure 50 are present.
21. Sub-deliveries are permissible to a reasonable degree. They shall be invoiced separately.
22. Within a tolerance of 10% of the total order quantity process, excess or short deliveries due to production are permissible. According to their scope the total price shall change.

Shipping and passage of risk

23. We deliver in standard industry carton packaging.
24. Goods which have been notified as ready for collection must be collected by the partner without delay. Otherwise we are entitled to send the goods as we see fit or to store them at the cost and risk of the partner.
25. If no special agreement has been made we shall choose the means of transport and the route.
26. With transfer to the railway, the forwarding or shipping company or with the start of the storage, at the latest however with the departure from the plant or warehouse, the risk shall pass to the partner even if we have taken over the delivery.

Delay in delivery

27. If we can foresee that the goods cannot be supplied within the delivery deadline, we shall inform the partner without delay or in writing, notify it of the reasons as well as state the foreseeable delivery time as far as possible.
28. If the delivery is delayed by a circumstance listed in figure 50 or by the actions or omission to act of the partner an extension of the delivery deadline shall be granted.
29. The partner is only entitled to withdraw from the agreement if we are responsible for not meeting the delivery date and it has set us an appropriate deadline without success.

Reservation of ownership

30. We reserve ownership to the goods supplied until all accounts receivables from the business relationship with the partner have been settled.
31. The partner shall be entitled to sell these goods in the course of ordinary business as long as it meets its obligations from the business relationship with us punctually. It may however neither pledge the reserved goods nor offer them as security. The partner is committed to safeguard our rights in the event of a credited resale of the reserved goods.
32. In the event of the partner breaching its obligations, especially in the event of payment default, following the unsuccessful expiry of the deadline set for the partner we shall be entitled to withdraw from the agreement and recover the goods; the statutory requirements regarding the dispensability of a deadline shall remain unaffected. The partner is committed to release the goods.

We are entitled to withdraw from the agreement if an application is made to open insolvency proceedings for the partner's assets.

33. The partner already now assigns to us all accounts receivables and rights from the sale of goods in which we are entitled to property rights. We herewith accept the assignment. If the partner assigns its rights, also in the course of true factoring, our account receivable shall be due immediately; partner assigns its claims against the factor to us already now in advance.

34. The partner always carries out any adaptation or processing of the reserved goods on our behalf. If the reserved goods are mixed with other objects which do not belong to us or are inseparably mixed we shall acquire co-ownership to the new object in the ratio of the invoice value of the reserved goods to the other processed or mixed objects at the time of the processing or mixing.

If our goods are united with other mobile objects to form a uniform object or are inseparably mixed and the other object is considered as the main element our partner assigns us co-ownership on a proportional basis if it owns the main element. The partner shall retain the ownership or co-ownership for us. The same shall apply to the item resulting from the processing or mixing as does to the reserved goods.

35. The partner must inform us without delay about any foreclosure measures of third parties regarding the reserved goods, the accounts receivables assigned to us or other securities, and must provide us with all the documents necessary for an intervention. The same shall apply to impairments of any kind.

36. If the value of the existing securities exceeds the secured accounts receivable by more than 20 percent we are committed at the request of the partner to release securities of our choice.

Material defects

37. The quality of the goods are based solely on the agreed technical delivery regulations. If we have to deliver according to our partner's specifications, it shall take over the risk for the suitability for the intended purpose of use. For the contractual condition of the goods the time of the risk of passage in accordance with figure 26 is decisive.

38. We shall not be responsible for material defects which result through unsuitable or incorrect use, faulty assembly by the partner or third party, common wear or tear, faulty or negligent handling, nor for the consequences of incorrect changes by the partner or third parties or those carried out without our authorisation. The same shall apply to faults which only slightly reduce the value or the suitability of the goods.

39. Claims from material defects shall expire in 12 months. This shall not apply if the law imperatively stipulates longer deadlines.

40. If an acceptance of the goods or an initial sampling inspection has been agreed on, complaints of faults are excluded which the partner could have noticed during a careful acceptance or initial sampling inspection.

41. We must be given the opportunity to establish the faults complained about. Goods which have been complained about must be sent back to us without delay; we shall bear the transport costs if the complaint is justified. If the partner does not meet these commitments or without our permission carries out changes to the goods already complained about, it shall lose all material defect rights.

42. In the event of justified punctual complaints we shall provide a flawless replacement.

43. If we do not meet these commitments or do not meet them in line with the agreement within a reasonable time, the partner can set us a written final deadline within which we have to meet our obligations. After this deadline has expired unsuccessfully, the partner can demand a reduction of the price, withdraw from the agreement. A reimbursement of costs is excluded if the expenses increase because the goods were brought to another location after our delivery unless this is in line with the intended use of the goods.

44. The partner shall have the right of recourse against us only if the partner has not made any agreements with its purchasers in excess of the statutory claims based on defects. For the scope of the recourse claims the last sentence of figure 43 shall apply accordingly.

Other claims, liability

45. Unless otherwise stipulated below other and further-reaching claims of the partner against us shall be excluded. This shall in particular apply to claims for damages due to the breach of duties from the obligation and due to tort. We shall therefore not be held liable for damages which did not occur to the delivered goods themselves. Above all we shall not be liable for lost profit or other pecuniary damages of the partner.

46. These limitations on liability shall not apply in the event of intent, gross negligence of our legal representatives or executives as well as for culpable breach of essential contractual obligations. In the event of culpable breach of essential contractual obligations we shall be liable only for the typical contractual damages which would have been foreseeable when exercising prudence – except in cases of intent, gross negligence of our legal representatives or executives.

47. The limitations on liability shall furthermore not apply in cases in which according to the product liability law liability shall exist in the event of defects to the delivered goods for injury to persons and damage to property in privately used objects. It shall also not apply in the event of injury to life body and health and in the event of the omission of assured qualities if said assurance would have resulted in protecting the partner against damages which did not occur to the delivered goods themselves.

48. If our liability is excluded or limited this shall also apply to the personal liability of our employees, legal representatives and our vicarious agents.

49. The statutory provisions regarding the onus of proof shall remain unaffected herefrom.

Force majeure

50. Force majeure, labour disputes, unrest, official action, stoppage of delivery from our suppliers and other unforeseeable, inevitable and severe events shall release the contractual partner from its performance obligations for the duration of the disturbance and in the scope of their effects. This shall also apply if these events occur at a time when the contractual party in question is in default unless it has caused the default intentionally or through negligence. The contractual parties are committed as far as is possible to provide the necessary information without delay and to adjust their obligations to the altered circumstances in good faith.

Place of performance, place of jurisdiction and applicable law

51. Unless stated otherwise in the order confirmation, our place of performance is our place of business.
52. For all legal disputes including those in the context of draft and cheque proceedings our place of business is our place of jurisdiction. We shall also be entitled to file suit at our partner's place of business.
53. The contractual relationship shall solely be subject to German law.

The convention of the United Nations of 11 April 1980 on the international sale of goods (CISG) is excluded.