

# General Terms and Conditions of Supply and Payment of M. Droste Stahlhandel GmbH

## §1 Sphere of Application

1. These General Terms and Conditions of Supply and Payment (Terms) apply to all contracts - including future contracts - for the supply of goods and services by M. Droste Stahlhandel GmbH (hereinafter known as DROSTE) and all companies controlled by it as well as affiliates and their legal successors, including contracts for work and services. These Terms are deemed to be accepted at the latest on acceptance of the goods or service. Any statements to the contrary by the customer making reference to their own terms and conditions of business or purchase are hereby expressly opposed. The Purchaser's terms and conditions of purchase are not recognized even if DROSTE does not expressly oppose them again on receipt by DROSTE.

2. Quotations made by DROSTE are without obligation and non-binding. Any verbal agreements made by the employees of DROSTE are not binding until confirmed by DROSTE in writing or until confirmed in writing by the Purchaser within one week following the oral agreement vis-à-vis DROSTE and counter confirmed by DROSTE in writing. The same applies to additions, changes or collateral agreements.

3. In cases of doubt, the interpretation of commercial terms shall be based on the Incoterms 2010.

4. All statements such as dimensions, weights, drawings, descriptions, assembly sketches and drawings in pattern books, price lists and other printed materials are only approximations, although determined as accurately as possible, and to that extent are not binding on DROSTE. The same applies to statements of sub-suppliers of DROSTE. Models and drawings remain property of DROSTE.

5. Purchaser for the purposes of these Terms is also the orderer respectively principal for the purposes of contracts for work and services. Goods for the purposes of these Terms shall be the object of delivery respectively service.

## §2 Pricing

1. Prices are quoted ex works or ex warehouse (FCA), excluding carriage and Value Added Tax and fall due at the time of delivery or service, however at the latest one week following notification of readiness for shipment by DROSTE.

2. Import duties, public levies or taxes imposed or increased through legal measures after the day the contract is concluded are to be borne by the Purchaser.

3. Subsequent orders shall not be subject to the prices of previous or current orders.

4. If tax charges or other external costs, that are included in the agreed price, change later than four weeks after conclusion of the contract or if new charges of this kind arise, DROSTE shall be entitled to modify its prices accordingly.

5. DROSTE reserves the right to increase the agreed price in respect of goods not yet delivered if circumstances arise in connection with a change in the supply of raw materials and/or the economy, which make the manufacture and/or the purchase of the Goods substantially more expensive compared to the time the price was agreed. In this case the Purchaser may cancel any orders affected by the price increase within two weeks of the change being notified; further claims of the Purchaser are excluded.

## §3 Payment and Settlement of Accounts

1. Payment must be made, without deduction of any discounts, in such a way that DROSTE has access to the amount on the due date. The cost of payment transactions shall be borne by the Purchaser. The Purchaser shall only be entitled to a right of retention or right of set-off to the extent that its counterclaims are uncontested or are determined in a legally final manner.

2. If the payment period is exceeded or in cases of arrears, the interest rates quoted in the price list of DROSTE shall apply; in the absence of any,

DROSTE shall charge interest at a rate of 8 percentage points above the European base interest rate.

3. In cases where a payment period is agreed for the calculation of this interest, as for any interest calculations, the effective date is the day of delivery. In connection with payments, every order is considered a separate transaction.

4. On the basis of the authorization granted DROSTE by the companies belonging to the group of DROSTE (Section 18 German Stock Corporation Act), DROSTE is entitled to offset all claims to which the Purchaser is entitled, on whatever legal grounds, against DROSTE or any one of such group companies. This also applies if payment in cash by one party and in the form of bills of exchange or other performance by the other party has been agreed by way of provisional performance. Where appropriate, these agreements only relate to the balance. If the claims are due at different times, the claims of DROSTE for this purpose are due at the latest on the due date of the obligation of DROSTE and are settled at value. Regardless of any Purchaser's conditions to the contrary, DROSTE is entitled to offset payments against claims whereas the choice is on DROSTE. If costs or interest have already arisen, DROSTE shall be entitled to offset the payments first against the costs, then against the interest and finally against the principal amount.

5. Payments in the form of bills of exchange require the express consent of DROSTE in advance. All fees in respect of bills of exchange shall be borne by the Purchaser. The acceptance of bills of exchange does not mean deferment of the underlying payment.

6. Cash payments to DROSTE have only debt-charging effect if they are made to persons with written authorization to collect.

7. DROSTE is entitled to assign claims arising out of agreed contracts and to assign subcontracts to subcontractors.

8. If the Purchaser gets into payment arrears or does not honour a bill of exchange on the due date, or if other circumstances arise that indicate a substantial deterioration in the assets of the Purchaser after the time the contract was concluded and which threaten the claim of DROSTE to payment, DROSTE shall be entitled to call in all its claims relating to the same legal relationship, and to demand security or prepayment in respect of any other outstanding supplies of goods or services arising from the business relationship. Deterioration in the assets of the Purchaser is in particular given in the event a credit insurance company reduces or cancels the insured risk of the Purchaser and therefore the insurance coverage in favor of DROSTE is no longer sufficient. Should no security or prepayment be made, DROSTE may, after a reasonable grace period, rescind the contract or claim compensation on the grounds of non-performance; the same applies in case of breach of the payment terms.

9. The statutory regulations concerning payment arrears remain unaffected.

10. In case the Goods are exported, the Purchaser herewith assigns to DROSTE all claims to which it is, or will in future be, entitled against domestic and foreign banks in connection with the export, in particular claims from collection orders, from letters of credit or confirmations of letters of credit as well as securities and guarantees.

## §4 Performance of Deliveries; Delivery Periods and Deadlines

1. The delivery obligation of DROSTE is subject to the granting of all export and import licenses or other permits that may be required and to correct and timely delivery to DROSTE by its own suppliers, unless DROSTE is responsible for the incorrect or delayed delivery.

2. Statements as to delivery times are approximate. Delivery periods begin on the date of the order confirmation of DROSTE and only apply if all details of the order have been timely clarified and the Purchaser has timely met all of its obligations such as the provision of all public permits, the provision of letters of credit and warranties, or the making of any down payments.

3. If the Purchaser or its agents collects Goods not destined for the area of the Common Market, the Purchaser must produce to DROSTE the export certificate required for tax purposes. If not, the Purchaser must pay DROSTE an amount equal to the turnover tax amount on the invoice total applicable in the case of deliveries within home territory.

4. The relevant date for the delivery deadlines or delivery periods is the date of dispatch ex works or ex warehouse. If the Goods cannot be dispatched on

time through no fault of DROSTE, notification of readiness for dispatch is sufficient for compliance with the foregoing.

5. Instances of force majeure shall entitle DROSTE to delay the delivery for the duration of the hindrance and a reasonable restart period. This also applies if such events arise during an existing delay. Force majeure includes currency, trade policy and other sovereign measures, strikes, lockouts, production stoppages not caused by DROSTE (e.g. fire, machinery or roller breakdown, non-availability of raw materials or power cuts), traffic obstructions, delays in import/customs procedures and any other circumstances whatsoever for which DROSTE is not liable and which substantially hinder supply or make it impossible. It is irrelevant whether these circumstances arise with DROSTE, with the supplier or manufacturer or with an upstream supplier. If the aforementioned events make execution of the contract unreasonable for one of the parties to the contract, in particular if execution of substantial parts of the contract is delayed by more than 6 months, this party may declare the contract null and void.

6. The means of transport and type of dispatch shall be chosen by DROSTE.

#### **§5 Reservation of Proprietary Rights**

1. All Goods supplied remain property of DROSTE (reserved Goods) until all claims have been fulfilled, including in particular claims in respect of balances owed to DROSTE in connection with the business relationship. This also applies to future and conditional claims, e.g. from acceptors' bills of exchange and also if payments are made in respect of specifically designated claims. Claims of DROSTE shall also be deemed claims of the group companies designated in Section III. 3.

2. Processing and working on the reserved Goods shall take place for DROSTE as manufacturer as provided by Section 950 German Civil Code, without putting DROSTE under any obligation. The worked and processed Goods are deemed reserved Goods as provided by Para. 1 above. In the case of processing, combining and mixing reserved Goods with other goods by the Purchaser, DROSTE shall have a share of the ownership in the new item in the ratio of the invoice value of the reserved Goods to the invoice value of the other goods. If the ownership of DROSTE is extinguished by combination or mixing, the Purchaser hereby assigns to DROSTE the ownership rights to which it is entitled in the new stock or item in the proportion of the invoice value of the reserved Goods, and shall keep it free of charge on DROSTE' behalf. Co-ownership rights of DROSTE are deemed reserved Goods as provided under Para. 1 above.

3. The Purchaser may only sell the reserved Goods in the ordinary course of business to its normal business contacts as long as the Purchaser is not in arrears, provided that the claims from onward sales in accordance with Paras. 4 and 5 are assigned to DROSTE. The Purchaser is not entitled to make any other use of the reserved Goods.

4. Claims arising from onward sales of the reserved Goods are hereby assigned to DROSTE. They provide security in the same scope as the reserved Goods. If the reserved Goods are sold by the Purchaser together with other goods not sold by DROSTE, the claim from the onward sale will be assigned to DROSTE in the proportion of the invoice value of the reserved Goods to the invoice value of the other goods. When Goods are sold in which DROSTE has co-ownership according to Para. 2, a part will be assigned to DROSTE in proportion of its co-ownership share. If the reserved Goods are used by the Purchaser to fulfil a contract for work or services, the claim arising from the contract for work or services shall be assigned to DROSTE in advance in the same scope.

5. The Purchaser is entitled to collect claims from the onward sale. This authority to collect shall be extinguished on cancellation by DROSTE, but immediately on payment arrears, failure to honour a bill of exchange or request for the opening of insolvency proceedings. DROSTE will only make use of its right of cancellation if it becomes aware of circumstances that give rise to a substantial deterioration in the assets of the Purchaser that threaten DROSTE' claim to payment. The Purchaser is obligated, at the request of DROSTE, to inform its customers immediately of the assignment to DROSTE, and to give DROSTE the documents necessary for collection.

6. Assignment of claims from onward sales is not permitted unless it is an assignment in the course of genuine factoring, of which DROSTE is notified and where the factoring proceeds exceed the value of DROSTE' secured claim. The claim of DROSTE becomes due immediately the factoring proceeds are credited.

7. The Purchaser must inform DROSTE immediately of any seizure or other impairment by a third party. The Purchaser bears all costs incurred in cancelling the intervention or in respect of the return transport of the reserved Goods, provided they have not been reimbursed by a third party.

8. If the Purchaser gets into payment arrears or does not honour a bill of exchange on the due date, DROSTE shall be entitled to take back the reserved Goods and where necessary enter the Purchaser's premises in order to do so. The same applies if other circumstances arise that indicate a substantial deterioration in the assets of the Purchaser and threaten DROSTE' claim to payment. Taking back does not constitute withdrawal from the contract.

9. If the total invoice value of the existing securities exceeds the secured claims including incidental claims (interest, costs, etc.) by more than 10%, DROSTE shall be obligated, at the Purchaser's request, to release securities of DROSTE' choice to the appropriate value.

10. In the case of definitive taking back, DROSTE is entitled, on issuing the credit, to make a fixed deduction of 25% without further proof, unless the Purchaser provides evidence of a lower damage. DROSTE reserves the right to claim further compensation.

11. To the extent that the law of the location in which the Goods are to be found does not permit a retention of title, DROSTE may exercise all rights that it can reserve with respect to such Goods. The Purchaser is obligated to assist in all measures DROSTE may take for the protection of its title and/or another right of security in such Goods.

#### **§6 Qualities, Dimensions and Weights**

1. Qualities and dimensions are determined in accordance with the DIN standards and material information sheets. If there are no relevant DIN standards or material information sheets, the relevant Euro standards apply, and in the absence of these, the customary practice in the trade. Reference to standards, material information sheets or works test certificates and statements as to qualities, dimensions, weights and applications shall not constitute assurances, nor declarations of conformity, manufacturers' declarations nor the corresponding symbols such as CE and GS.

2. For the weights the weighing undertaken by DROSTE or its sub-suppliers is decisive. Proof of weight is provided by producing the weighing slip. To the extent legally permissible, weights may be determined without weighing in accordance with DIN. This does not affect the additions and deductions usual in the steel industry in the Federal Republic of Germany (trade weights). The number of items, packages etc. stated in the dispatch note are non-binding in the case of Goods calculated by weight. Insofar as individual weighing is undertaken in exceptional cases, the overall weight of the consignment applies. Differences between calculated individual weights are to be allocated proportionally.

#### **§7 Acceptance**

1. If an acceptance inspection is agreed, this may only take place at the supplier's works or DROSTE' warehouse immediately on notification of readiness for inspection. The inspection costs are to be borne by the Purchaser; they shall be invoiced to the Purchaser in accordance with the current price list of DROSTE or that of the supplier's works.

2. If the inspection is not undertaken, is incomplete or not on time, or in each case is not undertaken within one week following notification of readiness for shipment and DROSTE is not at fault, DROSTE shall be entitled to dispatch the Goods without inspection, or have them stored at the cost and risk of the Purchaser and invoice the Purchaser accordingly. In case the Purchaser fails to accept the supply after a reasonable grace period has been set by DROSTE, DROSTE may rescind the contract and claim a lump-sum default compensation in the amount of 10% of the agreed net price without further proof, unless the Purchaser provides evidence of a lower damage.

#### **§8 Dispatch, Transfer of Risk, Packaging, Partial Delivery, Ongoing Deliveries**

1. DROSTE determines the delivery route, means of transport, freight forwarding company and carrier.

2. Goods notified as ready for dispatch in accordance with the contract must be called down immediately, otherwise DROSTE shall be entitled at its own choice to dispatch them at the expense and risk of the Purchaser after giving due warning or store them and invoice for this immediately.

3. If transportation by the prescribed route or to the prescribed destination in the prescribed time is not possible through no fault of DROSTE, DROSTE shall be entitled to deliver by a different route or to a different destination; any costs arising shall be borne by the Purchaser. The Purchaser shall be given the opportunity to comment in advance.

4. On handing over the Goods to a freight forwarding company or carrier, or on leaving the warehouse or supplier's works, but at the latest one week following notification of readiness for shipment, the risk, including that of seizure of the Goods, is transferred to the Purchaser as for all transactions, including free and post-free deliveries. DROSTE will only take care of insurance if asked to do so by and at the expense of the Purchaser.

5. The Goods will be supplied without packaging or rust protection. DROSTE will supply with packaging if this is the usual practice in the trade. DROSTE will take care of packaging, protective devices, and/or transport auxiliary materials at its own choice and at the expense of the Purchaser. They will be taken back at DROSTE' warehouse. DROSTE will not bear the Purchaser's costs for return transport or the Purchaser's own disposal of the packaging.

6. DROSTE is entitled to make partial deliveries within a reasonable scope. Excess deliveries and short deliveries of the agreed quantities are allowed within the scope usual in the sector.

7. In the case of agreements involving ongoing deliveries, call-downs and batch distribution must be given vis-à-vis DROSTE for roughly similar monthly quantities; otherwise DROSTE shall be entitled to determine the conditions itself according to equitable discretion.

8. If the total amounts of the individual call-downs exceed the contractual quantity, DROSTE shall be entitled to deliver the excess quantity, but not obligated to do so. DROSTE may invoice for the excess quantity at the prices valid at the time of call-down or delivery.

#### **§9 Notification of Defects, Warranty and Liability**

DROSTE offers warranty in respect of defects in the Goods and the lack of assured attributes (Defects) only in accordance with the following provisions:

1. For the supply of scrap, the Purchaser is aware of the fact that scrap is a secondary raw material whose purity is limited in regard to quality, material and the possibility of sorting by appearance and origin. A guarantee of the type and or alloy purity is not possible.

2. The Goods must be inspected by the Purchaser upon acceptance in terms of Defects and technical features with maximum care; the same applies, if necessary repeatedly, prior to any processing and working on the Goods by the Purchaser or further customers of the Purchaser that were bound to the same obligation by the Purchaser.

3. Notification of Defects in the Goods must be given in writing immediately, and no later than seven days after delivery. Defects that could not be discovered within this period even on the most careful inspection must - subject to immediate cessation of any process or work on the Goods - be notified in writing immediately following their discovery, no later than the expiry of the warranty period and in no case later than one year following delivery.

4. Once an inspection of the Goods has been carried out by the Purchaser as agreed, no Defects may be notified that could have been discovered given the agreed inspection type.

5. If the Purchaser does not immediately give DROSTE the opportunity to convince itself of the Defect, in particular if the Purchaser does not make the objected Goods or samples available to DROSTE within 7 days, all claims based on liability for Defects shall be extinguished.

6. In case of Goods sold as declassified materials - e.g. Ila materials - the Purchaser shall not be entitled to any warranty claims regarding the errors stated or others that it may normally expect in this case.

7. The prerequisites for liability claims is further that the Purchaser is not in payment arrears under consideration of a reasonable warranty retention.

8. To the extent the Goods show a Defect, the Purchaser is entitled at the choice of DROSTE to subsequent performance through rectification of Defects or subsequent delivery. DROSTE shall be obligated to bear all expenses required to render subsequent performance such as personnel, material, and transport costs as well as tolls unless such expenses are increased due to the fact that the Goods were shipped to a place other than

the delivery address. Replaced Goods pass into the ownership DROSTE and shall be returned to it.

9. If and when the subsequent performance fails, the Purchaser may, notwithstanding any claims for the redress of damages or outlays pursuant to Section 10, at its own choice either reduce the remuneration or, if the breach of duties by DROSTE is substantial, rescind the contract.

10. DROSTE offers a warranty for rectification of Defects and subsequent delivery in the same scope as for the original delivery or performance, i.e., the replacement parts respectively the rectification is subject to the same limitation periods as the initial delivered item.

11. The limitation period for claims based on Defects amounts to twelve months following acceptance, respectively without acceptance twelve months following passing of risk.

#### **§10 Compensation and Limitation**

1. DROSTE is fully liable for damages resulting from an infringement of an unlimited guarantee or from injury to life, body, or health as well as in cases of intent or gross negligence of DROSTE' representatives and auxiliary agents.

2. DROSTE is further liable according to the statutory provisions in case DROSTE culpably breaches a substantial contractual duty, whereas the liability of DROSTE, subject to Para. 1, is limited to foreseeable damages which can be expected to typically occur within the context of the contract.

3. In any other respect, liability for damages is excluded irrespective of the legal nature of the damage asserted. Insofar, DROSTE is in particular not liable for damages that have not occurred to the Goods themselves, such as lost profits or other pecuniary losses of the Purchaser.

4. Damage claims cited in No. 2 become statute-barred in twelve months after approval or in the absence of approval twelve months after passing of risk.

5. Statutory liability for product defects remains unaffected.

6. Claims for compensation of expenses of the ordering party are in any case limited to the amount of the interest which such party has in fulfilling the contract.

7. To the extent liability of DROSTE is excluded or limited, this shall also apply in respect of the personal liability of the employees, staff members, representatives, and auxiliary persons of DROSTE.

#### **§11 Special Conditions for ECSC Products, Assignments, Fraud, Corruption**

1. The Purchasers of DROSTE are obligated to adhere to the provisions of Art. 2 to 7 of Decision No. 30/53 and to Decision Nos. 31/53 and 37/54 of the European Commission, each as amended, in respect of their own price lists and terms and conditions of sale for the onward sale of unmodified Goods, with the exception of sales from the warehouse.

2. The assignment of contractual rights of the Purchaser requires the prior consent of DROSTE to be legally effective.

3. The Purchaser undertakes to prevent fraudulent behavior of its employees in connection with the receipt of moneys or other benefits. The Purchaser guarantees that it has not paid, and will not pay, any presents or premiums to employees, authorized agents, auxiliary agents, or representatives of DROSTE, and that it has also not promised such payment under any contract or arrangement.

4. In case of breach of the Paras. 1 to 3 above, DROSTE may rescind the contract and demand from the Purchaser replacement of the damage that has occurred to DROSTE in consequence of the rescission or that has occurred to DROSTE in consequence of the breach, irrespective of whether or not the contract has been terminated.

#### **§12 Place of Performance, Legal Venue, Applicable Law, Miscellaneous**

1. The place of performance for the deliveries by DROSTE is, in the case of ex works deliveries, the supplier's works, and in the case of other deliveries, the warehouse of DROSTE.

2. For merchants the legal venue is Frankfurt. DROSTE may also bring action against the Purchaser at the Purchaser's legal venue.

3. All business relationship between the Purchaser and DROSTE shall be governed by and construed in accordance with these Terms and the German laws to the exclusion of the United Nations Sales Convention as of April 11, 1980 (CISG).

4. Should a provision of these Terms or of any other connected agreement be or become ineffective, this shall not affect the validity of any of the other provisions or agreements. The ineffective provision shall be replaced by one which most closely approximates to the economic intent of the original provision.