

# **General Terms and Conditions**

## **MONTANSTAHL SA**

(Edition 04/2020)

### **1. Validity**

The contractual liability of MONTANSTAHL SA only arises after a written confirmation has been given by MONTANSTAHL SA. Agreements differing from this written confirmation require the written approval of MONTANSTAHL SA.

These general terms and conditions («GTC») apply for the processing of all of our goods deliveries and the provision of the related services to companies. Any conditions of the customer that contradict or deviate from our GTCs require our express written consent in order to be valid. Our GTCs shall also apply if we perform unconditional delivery to the customer whilst being aware of contradictory or deviating conditions of the customer.

### **2. Pricing and invoicing**

Quoted and invoiced prices do not include statutory VAT. All quantities, dimensions, weights and additional information contained in an offer are quoted with the greatest care, however no responsibility is accepted for their accuracy. For invoicing, the sizes and quantities of the actual delivery or performance apply, on the basis of the acknowledged delivery notes. The agreed and invoiced prices are only valid, providing that the customer observes the agreed payment conditions. In the event that payments are not punctually made, MONTANSTAHL SA is entitled to make additional charges.

### **3. Payment and Payment terms**

Payments and payment terms are always stipulated in the order confirmation. In case no other agreements apply, the invoiced prices are payable net. The customer can claim a discount only insofar as it is clearly stated on the order or the invoice. Complaints for deficiencies or belated deliveries do not entitle the customer to modifications of the due date of settlement or an extension of the credit period. Discounts can only be applicable when invoices are settled within the agreed deadline for early payment and no older invoices remain unpaid. All customer payments will be used to extinguish older debts. In case of delayed payments, the customer can be charged monthly interest on arrears at bank rates. In case of delayed payments, the customer is also bound to reimburse extra-judicial reminder fees. In case of delayed payment of even a part of a total outstanding invoice, MONTANSTAHL SA is entitled to immediately demand payment for the balance.

## 4. Reservation of title

Goods delivered remain property of MONTANSTAHL SA until the payment has been made in full. In case the goods are combined or processed with other articles, the purchaser forthwith transfers his full or partial proprietary rights pertaining to the processed material, or to the new item, over to MONTANSTAHL SA and is to store such goods using due commercial care. Obligations against third parties arising from the disposal of ownership are forthwith transferred to the supplier. At the latter's request, the buyer is legally bound to declare to the third-party buyer the transfer of proprietary rights regarding payment to MONTANSTAHL SA. In case of the institution of bankruptcy proceedings concerning the customer's estate or in case of payment delayed 60 days after the due date, MONTANSTAHL SA is entitled to remove existing goods from the customer's possession, thus exercising his proprietary rights, and to avail himself, by an analogous procedure, of the regulations concerning the return of goods. Should MONTANSTAHL SA, by reason of the aforesaid reservation of title, repossess the delivered goods, the purchaser will be liable for any shortfall arising from the resale of these goods, as well as bearing the return and forwarding costs.

## 5. Prohibition of transfer

The purchaser is not entitled to transfer obligations onto MONTANSTAHL SA, regardless of the legal grounds. This applies also to future obligations.

## 6. Delivery and impairment of performance

Delivery times indicated by MONTANSTAHL SA will be adhered to according to feasibility and possibility. Should this not be possible, the purchaser is entitled to rescind the contract after agreeing to a reasonable extension. The purchaser may not reject partial deliveries and waives the right to enforce claims for damages resulting from delayed deliveries.

The period for delivery begins with the date of definitive and full confirmation of order. The delivery period re-commences if MONTANSTAHL SA does agree to subsequent alterations. MONTANSTAHL SA accepts no liability in relation to any delay in delivery nor for any coincidence. Delays in delivery neither entitle the customer to withdraw from the contract nor to claim damages.

In these GTC, force majeure shall include any and all unforeseeable events in the service provision processes of MONTANSTAHL SA, or third parties with which it has a contractual relationship, which could cause the provision of services to be disrupted (delayed, rendered impossible or more difficult, etc.). This includes acts of state with the same or similar repercussions (e.g. import and export bans, increases in duties, changes to permit practices).

Force majeure events are, in particular, natural phenomena of a certain severity (earthquakes, volcanic eruptions, water shortage, etc.), wars, acts of terrorism, boycotts, lockouts, authorised/unauthorised strikes, shortage of raw materials, epidemics and other serious incidents and their consequences in the locality of the business premises of MONTANSTAHL SA or of third parties with which it has a contractual relationship. In the event of such impairment of performance, MONTANSTAHL SA is (i) released from the service obligation without compensation if performance is impossible or entitled, (ii) in case of default or (iii) in the event of disproportionate impediment to the performance, to propose a new delivery date to the customer for the former and a new offer for the latter, and to withdraw from the contract in the event that these proposals are rejected. Should MONTANSTAHL SA's service provision be disrupted in any other way, the legal consequences of (iii) above shall apply.

Should similar events (force majeure, acts of state or other circumstances) cause the customer's demand or interest to change, the customer shall still be obliged to make full payment to MONTANSTAHL SA, regardless of their predictability or fault on the part of the customer. The parties are entitled to make other arrangements, to be agreed between them on an individual basis.

## **7. Blanket orders**

In case of business transactions with continuous deliveries based on bulk orders, the purchaser has a duty to make call offs and plan the relevant assignment of the monthly quantities. Should such call offs or assignments not be punctually made, then MONTANSTAHL SA, having twice made requests for call offs or assignments, is entitled to assign quantities and carry out deliveries of his own accord at least every four weeks, or to rescind the remaining part of the transaction or to demand compensation for non-performance.

## **8. Deliveries in excess or in default**

Unless agreed separately in writing, excess or short deliveries of up to 15% are permissible.

## **9. Drawings and tools**

MONTANSTAHL SA reserves the right of ownership and copyright in drawings and other documentation. These may not be duplicated or made accessible to third parties. Tools and similar items including for which the customer has undertaken part payment, remain in the ownership of MONTANSTAHL SA. MONTANSTAHL SA may dispose of the tools without giving prior notice on expiry of three years from the date of the last delivery.

## **10. Consultancy**

All sketches, drawings or other designs, processes and ideas proposed by MONTANSTAHL SA are given to the customer for examination, without obligation. It is the concern of the customer to ensure by manufacture of prototypes or by other suitable measures that these designs, processes and ideas are suitable for his purposes and that no industrial property rights, standards and regulations are infringed by their use. The liability of MONTANSTAHL SA for such proposals and advice is expressly excluded.

## **11. Dispatch and transfer of risk**

Liability for risks is transferred to the purchaser when the goods are handed over to the carrier or forwarder and at the latest, however, when they leave the Company. Terms such as FOB, C+F and CIF require particular agreements.

## **12. Warranty, duty to inspection and complain**

Transport damages are to be communicated to the carrier and the supplying Company without delay. Complaints are to be made by the purchaser in writing without delay, at the latest 14 days after goods have arrived at the place of destination. In case of faults which cannot be detected within this period, despite even the most careful inspection, complaints must be raised upon detection without delay, immediately ceasing any possible processing, and must be supported with sample pieces.

The warranty provided by MONTANSTAHL SA is limited to the free replacement or, at its discretion, to the free repair of products which have not been processed by the customer and which MONTANSTAHL SA recognises as defective. Alternatively, the reduced value may also be refunded. The product warranty expires 24 months after delivery or storage at the suppliers premises. Any other warranty claims by the client are excluded.

## **13. Claims for compensation**

Regardless of the legal grounds, the purchaser is not entitled to claims for compensation against MONTANSTAHL SA, unless they are based on intention or gross negligence. The claim is limited to compensation for damage which is foreseeable at the moment of completion of the contract. Other claims differing from those mentioned in these circumstances are excluded.

## **14. Severability clause**

Should individual provisions of these GTCs be or become invalid and/or ineffective, in full or in part, (e.g. due to contradictory GTCs [Battle of the forms]), the validity and/or effectiveness of the remaining provisions or parts of such provisions will remain unaffected. Should individual provisions be invalid or ineffective, or should these GTCs be incomplete, the parties shall endeavour to reach a mutual solution before bringing the matter before a court.

## **15. Applicable law and place of jurisdiction**

The contractual arrangements of the parties are subject to the substantial laws of Switzerland excluding the conflict-of-laws provisions and the Vienna Convention on the International Sale of Goods. The courts of justice in Lugano (Switzerland) shall be competent to decide on all disputes arising from or in connection with the contractual relationship of the parties. MONTANSTAHL SA reserves the right to commence proceedings against the customer at his domicile