

# **Westfälische Metall-Locherei Franz Fahl GmbH**

## **General Terms and Conditions of Business**

### **General terms and conditions of business**

For use in dealings with:

1. Persons who upon entering into the contract pursue their commercial or self-employed professional activity (entrepreneurs, Section 14 BGB (German Civil Code));
2. Legal entities under public law or a federal special funds;  
- hereinafter referred to jointly as “Buyers” –

#### **I. General**

1. All deliveries and services are based on these conditions (as well as potential separate contractual agreements). These also apply to all future business relations, including if they are not once again expressly agreed upon.
2. In the absence of a separate agreement – a contract shall be brought about by way of our written order confirmation.
3. The Buyer’s conditions to the contrary, which we do not expressly acknowledge in writing, shall not be deemed the content of the contract either as a result of the acceptance of an order.
4. These conditions also apply to all future business transactions with the Buyer provided these are related legal transactions and no up-dated conditions apply.

#### **II. Offers and entering into contracts**

1. All offers are subject to change without notice and non-binding. In the case of additional or shortfall orders, the prices may, in particular, vary.
2. Solely the written order confirmation shall be authoritative for the acceptance, scope and performing the delivery. Offers that amend or supplement orders shall therefore similarly be subject to written confirmation. In the event of the immediate placing of an order, the delivery note or the goods invoice shall also apply as confirmation of an order. Agreements, assurances, supplementary information or subsidiary agreements entered into or made by telegram, telephone, e-mail or verbally shall also be subject to written confirmation in order to be deemed valid. Our field service representatives are not authorised to agree on amendments to the terms and conditions of delivery and payment.
3. Drawings, diagrams, measurements, weights or other data in brochures, circulars, price, other publications or in our offers and/or the appertaining documents are only approximate in terms of their authoritative nature. They shall only contain assurances if they have also been described as such.
4. Quality standards and measurements are based on DIN standards or material specifications. Provided DIN standards or material specifications do not exist or are not available, the corresponding Euro standards shall apply. Otherwise, practice that is customary in the trade shall apply.
5. Without express approval, the raw material does not need to be of a special surface quality and in particular does not need to be free of grease. In the case of a delivery based on a Buyer’s requirements, the Buyer shall assume the risk of suitability for the proposed use.

### **III. Delivery periods, default in delivery**

1. Any details about delivery times are only approximate, and are therefore non-binding. The date of the order confirmation is authoritative for the start of the delivery time. Honouring the delivery time is conditional on the fact that all commercial and technical matters between the contracting parties have been clarified, and the Buyer has honoured all its obligations such as making available documents, releases or making payments on account. If this is not the case, the delivery time shall be extended accordingly. The Buyer may request performance in writing at the earliest 1 month following expiry of the delivery date stated on a non-binding basis and for its part set a delivery period, which must be at least 14 days.
2. Honouring such a stated delivery period is subject to correct and timely own delivery. We shall provide notification as soon as possible of delays that become evident.
3. The delivery time shall be extended accordingly – including during default in delivery – for example in the event of force majeure, measures as part of industrial disputes, lack of energy and other events beyond the Suppliers area of influence. We shall be released from our obligation to perform for the duration of the disruption. The Buyer shall be notified as soon as possible of the start and end of such hindrances.
4. In the event of subsequent contractual amendments, which may exert an influence on the delivery period, the delivery period shall be extended appropriately.
5. The delivery period shall be deemed honoured if the delivery item has left the Supplier's plant by expiry of the delivery period or if notification of readiness to deliver is provided. Provided acceptance has been agreed upon, the acceptance date shall be deemed authoritative – apart from a justified rejection of acceptance – alternatively notification of readiness to accept.
6. If shipping is delayed at the Buyer's request, the Buyer shall be charged for the costs arising as a result of the storage, starting one month following notification of readiness to deliver, in the case of storage at our plant at least, however, 0.5 % of the invoice amount for each month. We shall also be entitled, after setting, and the expiry in vain of, a reasonable period to otherwise dispose of the delivery item and thereupon supply the Buyer by way of an appropriately extended period.
7. If the Buyer sustains damage as a result of the default in delivery, the Buyer shall be entitled to request flat-rate compensation for default. It shall be 0.5 % of the value of the part of the overall delivery that cannot be used in good time or not as per agreement, overall however at most 5 %, for each week that lapses in which the default applies. If the Buyer sets a reasonable period for performance following the due date – with consideration given to the statutory exceptional cases – and if the period is allowed to lapse in vain, the Buyer shall be entitled to withdraw from the contract as part of the statutory requirements. Further claims resulting from the default in delivery shall be determined exclusively in accordance with Section IX.2.

### **IV. Right to withdraw from the contract**

1. If honouring the contractual obligations is temporarily hindered as a result of the occurrence of unforeseeable circumstances, in particular "force majeure", regardless of application of acceptable care in accordance with the circumstances of the case, irrespective of whether or not the hindrances occur at the plant or affect our suppliers (e.g. interruption of operations, strikes/lock-outs, delays in the delivery of key raw materials, lack of energy, malfunction in the means of transport etc.), the obligation to deliver shall be inapplicable without the Buyer

having the opportunity to claim for damages. The Buyer shall only be entitled to withdraw from the contract if the delay is unacceptable for the Buyer.

2. The Buyer may withdraw from the contract without setting a period if the entire performance ultimately becomes impossible prior to the passing of risk. In addition, the Buyer may withdraw from the contract if, in the case of an order, performing part of a delivery becomes impossible and the Buyer has a justified interest in rejecting the partial delivery. If this is not the case, the Buyer is to pay the contractual price attributable to the partial delivery. The same applies in the event of inability to perform. In other respects, Section IX. 2 applies. If the impossibility, or inability to perform, occurs during a default in acceptance, or if the Buyer is solely or largely responsible for these circumstances, the Buyer continues to undertake to provide counter-performance.

#### **V. Passing of risk, acceptance and shipping**

1. Risk shall pass to the Buyer if the delivery item has left our plant, including if partial deliveries are made or if we have assumed other services such as the shipping costs or delivery. Insofar as the performance is to be accepted, this shall be authoritative with regard to the passing of risk. It must be conducted without delay on the acceptance date or following notification of the readiness to accept (within 7 workdays). The Buyer may not reject the acceptance in the event of an insignificant fault. If the Buyer fails to accept or seriously refuses to accept irrespective of the setting of an additional period, we may claim damages for non-performance or withdraw from the contract in full or in part.
2. If shipping is delayed or not performed, or if this applies to the acceptance as a result of circumstances that are not our responsibility, risk shall pass to the Buyer from the day of notification of readiness to ship or accept. From the same time, the Buyer shall be liable for damage that third parties may sustain. An assurance is made to enter into the insurance policies, at the Buyer's cost, requested by the Buyer.
3. Shipping shall at all times apply at the Buyer's risk, including in the case of deliveries without charge and in the event of transportation by way of our own vehicles. At the Buyer's express wish, the consignment shall be insured by the supplier, at the Buyer's cost, against theft; breakage; transport, fire and water damage as well as other insurable risks.
4. In the absence of instructions issued by the Buyer, deciding on the shipping route, shipping type and means of shipping are our concern by way of exclusion of liability and without guarantee for the cheapest transport.
5. Partial deliveries are permitted provided these are acceptable for the Buyer.
6. Excess deliveries up to 10% and shortfall deliveries up to 5% of the overall order quantity are permitted. The total price is to be adjusted.

#### **VI. Price, packaging and payment**

1. In the absence of a separate agreement, the prices stated in the order confirmation are to be understood as ex works and include loading but exclude packaging, unloading and customs duties. Turnover tax in the respective, statutory amount is to be added to the prices. The prices are to be understood by way of retaining the quantities calculated and stated in the offer.
2. As a matter of principle, the goods shall be made available unpacked and without corrosion protection. Packaging or protective measures shall only be provided at the Buyer's request. Such measures or packaging shall be calculated at cost price. Complaints regarding faulty packaging are excluded.

3. The cost of returning and disposing of packaging is not included in the price, and where necessary shall be charged based on the costs incurred.
4. In the absence of a separate agreement, payment is to be made within 30 days following the invoice date without deductions or within 10 days at a 2% trade discount. Payments for hired work are to be made immediately without deductions.
5. The Buyer shall only be entitled to withhold payments or set off using counter-claims insofar as the Buyer's counter-claims are undisputed or have become res judicata. Warranty claims that are lodged do not impede the due date of our claim. If it becomes clear after entering into the contract that our claim for counter-performance is jeopardised as a result of lacking inability to pay, we may request the immediate provision of security or payment (Section 321 BGB).
6. In the case of call-off orders, the entire goods are to be called within the agreed call-off period. In the case of doubt at the latest within one year once an order is placed. Any partial call shall be recorded as an independent delivery in accordance with these terms and conditions of delivery and payment. If the call-off order is not accepted in full, the right is reserved to charge a markup for small-volume purchases. In the case of ongoing delivery divisions, the Buyer must provide notification of the envisaged phase out of a part as soon as possible – at least however 6 months prior to the phase out. Otherwise, the Buyer is to provide compensation for pre-planned material and production costs.

#### **VII. Reservation of title**

1. Ownership of the delivery item is reserved up until receipt of all payments resulting from the delivery contract, and in the case of an ongoing business association up until receipt of all payments resulting from the business association. Payment is deemed receipt of the equivalent.
2. The Buyer is entitled to process the reserved goods as part of its customary business operations. The processing or conversion of supplied reserved goods that we continue to own shall occur at all times on our behalf without this resulting in liabilities. If ownership of the reserved goods ceases to apply as a result of processing, conversion, blending or mixing, an agreement is reached at this point in time that ownership of the new item shall pass to us. The Buyer shall gratuitously store the item for us with the due care of a prudent businessman. In the event of the establishment of co-ownership of new items, the assignment to us is limited to a co-ownership share that is proportionate to the value of our reserved goods (invoice value). If the acquisition of (co-) ownership is restricted, the Buyer shall alternatively assign its compensatory claim to us.
3. The Buyer is entitled to resell the goods if it has been guaranteed that the purchaser shall only acquire ownership following payment in full of the purchase price. The Buyer hereby assigns to us at this point in time all claims to which the Buyer is entitled, including balance claims from current account receivables, from the sale, processing and finishing or the linking of the supplied goods. This applies equally to the Buyer's claims based on another legal reason (insurance and tortious act etc.) regarding the reserved goods. The assignment is restricted in each case in terms of amount to the delivery value of the goods supplied according to the invoice. Without the necessity of additional, separate explanations, the Buyer hereby simultaneously assigns in the proportionate value of the claims and rights assigned in this respect as part of the extended reservation of title, all security rights to which the Buyer is entitled against its customers. Insofar as this is not possible, the Buyer shall grant us a proportionate share by way of internal dealings. This applies similarly to the Buyer's rights against its customers to request the granting of a mortgage on a building site.

We accept the assignments. We authorise the Buyer, whereby such authorisation may be revoked, to collect the claims assigned to us on the Buyer's account and in its own name. As soon as the Buyer fails to honour a contractual obligation to us, the Buyer shall, on request, disclose the assignment and provide the necessary information and documents. We are also entitled to directly notify the Buyer's debtors of the assignment and request that these make payments to us. The same applies to security rights that may have passed or have been assigned to us.

4. If a customer of the Buyer has effectively excluded the assignment of claims against it, we and the Buyer shall, by way of internal dealings, render each other such as if the above-mentioned claims of any kind assigned to us in advance had been effectively assigned to us. We shall be authorised by the Buyer to assert the claims in the Buyer's name and on the Buyer's account as soon as the Buyer is no longer entitled, in accordance with the above regulation (sub-paragraph 3) to collect the claim in its own name.
5. Without our approval, the supplied goods may neither be pledged nor transferred by way of security. In the event of intervention by third parties regarding the reserved goods, the Buyer shall draw attention to our ownership, notify us without delay and provide any support required to safeguard our rights. Insofar as the third party is unable or undertakes to compensate us for the court and out-of-court costs incurred in that respect, the Buyer shall render us exempt from such costs.
6. In the event of breach of contract, and in the event of lacking creditworthiness, on the part of the Buyer – in particular in the event of default in payment – separation of property may be requested without delay. We are entitled to take back the delivery item and the Buyer undertakes to surrender. The Buyer grants us, or a party authorised by us, access to collect and take away.
7. An application filed for the institution of insolvency proceedings regarding the Buyer's assets shall entitle us to withdraw from the contract and request the immediate return of the delivery item.
8. If the value of the securities to which we are entitled exceeds the claims to which we are entitled against the Buyer in total by more than 10 %, at the Buyer's request we undertake insofar as to release securities at our discretion.

#### **VIII. Warranty claims**

1. The Buyer is to inspect the goods without delay following delivery, and in that respect similarly without delay (within 1 week following acceptance) provide written notification of identified defects and lodge a complaint. The obligations to inspect and provide notification of defects are based on Section 377 HGB. We shall be granted the opportunity to record and review the defects about which a complaint has been lodged. Insofar as we adopt measures to minimise damage or enter into negotiations regarding a defect for which notification has been provided, this shall neither be deemed an acknowledgement of or waiving an objection to a fault for which notification is not provided in good time.
2. We shall subsequently improve supplied parts that prove to be faulty as a result of circumstance that occurs prior to the passing of risk at our discretion, or we shall replace these with parts free of faults. Replaced parts shall become our property. If the subsequent improvement fails, or if we do not state our position, the Buyer's statutory warranty rights shall be revived.
3. Following an agreement, the Buyer is to make available to us the necessary time and opportunity to perform all the required improvements and replacement deliveries in the case of a justified notification of defects. Otherwise, we shall be released from the liability

for the resulting consequences. Only in urgent cases to ward off disproportionately serious damage, whereby we are to be notified immediately, shall the Buyer be entitled to rectify the defect itself or make arrangements to have it rectified by a third party and request compensation for the required expenses.

4. Insofar as a complaint proves justified, we shall only carry the costs that apply as a result of the subsequent improvement or replacement insofar as such costs do not lead to a disproportionately high cost. Of the direct costs that arise as a result of the subsequent improvement or the replacement, we shall carry the cost of the replacement, including the shipping to the originally agreed place of delivery. Potential costs involving extension or installation, labour costs or the cost of bringing an item to a location other than the delivery location shall be borne by the Buyer.
5. As part of the statutory requirements, the Buyer shall be entitled to withdraw from the contract if we allow a reasonable period set for us for the subsequent improvement or replacement regarding a material defect to lapse in vain – with consideration given to the statutory exceptional cases. If merely an insignificant defect applies, the Buyer shall merely be entitled to reduce the contractual price. Otherwise, the right to reduce the contractual price shall remain excluded. Additional claims shall be determined in accordance with Section IX.2 of these conditions.
6. We do not, in particular, provide any guarantee in the following cases: usefulness of the goods for the purpose intended by the Buyer unless the usefulness was expressly confirmed as per agreement; unsuitable or inappropriate use; faulty assembly or processing by the Buyer or third parties; natural wear-and-tear; faulty or negligent handling; chemical, electro-chemical or mechanical influences provided they are not our responsibility. Commercial variations in terms of weight, colour, measurements and quantity do not constitute defects.
7. No guarantee is provided for information, legal advice and references regarding potential performance features, areas of application and application options and the like unless these have been assured in writing. The Buyer is to obtain information about potential export provisions and government regulations.
8. If the Buyer, or a third party commissioned by the Buyer, makes inappropriate subsequent improvements, we shall not assume any liability for the resulting consequences. The same applies to alterations made to the delivery item without our prior approval.

## **IX. Liability**

1. If the delivery item that we are required to provide cannot be used by the Buyer as per agreement as a result of the lack of or faulty performance, for which we are responsible, proposals and advice prior to or after entering into the contract or as a result of violation of other contractual collateral obligations, the regulations of Sections VIII. and IX. 2 shall apply accordingly by way of exclusion of additional claims on the part of the Buyer.
2. We shall only be liable for damage that is not attributable to the delivery item itself – for whichever legal reasons – only
  - a. in the case of intent; in the case of culpable loss of life, physical injury and detrimental effects on health,
  - b. in the case of defects that we fraudulently conceal or the absence of which we have guaranteed,
  - c. in the case of defects in the delivery item insofar as liability applies in accordance with the German Product Liability Act for personal or material damage to privately used items,
  - d. in the event of gross negligence on the part of executive bodies or managerial staff and
  - e. in the event of the culpable violation of key contractual obligations.

Our liability for the negligent violation of key contractual obligations and gross negligence on the part of our vicarious agents is limited to typical and reasonably foreseeable damage. There is no obligation to provide compensation for minor, negligent violations of obligations on the part of our legal representatives and vicarious agents.

3. Additional claims are excluded.

#### **X. Statute of limitations**

All the Buyer's claims – based on whichever legal grounds – shall fall under the statute of limitations in 12 months. The statutory periods apply claims for damages in accordance with Section IV. 2 a-e.

#### **XI. Special conditions for punched sheet plates**

1. If sheet plates are processed on the basis of the Buyer's drawings, descriptions or samples etc., the Buyer shall assume the sole guarantee that no third party property rights or copyrights shall be infringed upon as a result of the processing in the above-mentioned manner.
2. We shall not be liable if a slight rust film forms on the parts as a result of degreasing them or if sheet metals from a strength of 80 kg tear as a result of the processing and furthermore if fine holes are created in the full bath galvanisation with a zinc film.
3. We shall not be liable if minor imperfections are identified on borders during punching.
4. If the Buyer makes available to us the material to be processed, this shall as a result be hired work and these provisions apply by way of analogy and in addition the following apply:
5. Liability for defects is excluded for damage that is caused as a result of material defects in the provided material that are not acknowledged.
6. The Buyer is to make the material available freight-free and free of charges.
7. If material faults lead to increased production costs, our price may be increased accordingly. Scraps and cuttings created during hired work are taken into account in the determined price. Therefore, these are not remunerated separately and shall become our property.
8. Waste in the case of hired work involving plastics shall be sent to the Buyer at the Buyer's cost.
9. In the case of justified complaints, we shall be liable at most in the sum of the justified wage. We shall only acknowledge claims that extend beyond this – in particular for the supplied material – if we had previously assured further reaching liability in writing.

#### **XII. Place of performance, place of jurisdiction, applicable law**

1. The registered office of our company is deemed the place of performance for all obligations resulting from the contractual relationship.
2. The registered office of our company is deemed the place of jurisdiction provided the Buyer is a merchant, legal entity under public law or federal special funds or does not have a general place of jurisdiction in the Federal Republic of Germany. However, we are also entitled to bring legal action at the place of jurisdiction attributable to the Buyer's registered office.
3. Solely the authoritative law of the Federal Republic of Germany that applies to the legal relations of domestic parties amongst themselves applies to any legal relations between us and the Buyer by way of exclusion of the UN Sales Law.
4. In the case of foreign business transactions, in addition application of Sections 305 – 310 BGB is excluded.

**XIII. Final provisions**

1. The potential invalidity of individual provisions shall not affect the validity of the other provisions.
2. The Buyer's personal data shall be gathered, processed and stored for the purpose of executing the contract.