

**General Terms and Conditions (GTC)  
of GMH Stachow-Metall GmbH****I. General Provisions**

The following Terms and Conditions apply to all contracts, deliveries and performance between GMH Stachow-Metall GmbH – hereinafter referred to as "GMH" – and any "Contracting Party" – hereinafter referred to as "Contracting Party".  
The following Terms and Conditions explicitly also apply to the phase prior to the conclusion of contract and to all future business relationships, even if not explicitly agreed again separately.

Any divergent or additional conditions of the Contracting Party and any subsidiary agreements shall be binding only if confirmed in writing by GMH in a letter or fax.

**II. Scope of Performance, Conclusion of Contract**

All offers submitted by GMH are without obligation and subject to change. Prices and scope of performance shall cover the performance confirmed in writing by GMH in a letter or fax.

**III. Delivery Periods and Default**

Delivery periods and dates of acceptance shall be binding only if stated by GMH in writing and shall be subject to correct and punctual deliveries to GMH itself.

GMH shall be obliged to comply with delivery periods and dates of acceptance only if the order has been fully clarified, all licences, permits etc. have been granted and all documents, payments and security to be provided by the Contracting Party have been received by GMH on schedule. In case of non-fulfilment of the foregoing requirements, the delivery period shall be appropriately extended.

If GMH is prevented from acceptance and/or delivery on schedule owing to mobilisation, war, civil commotion, strike, lockout, operational disruptions, fire, natural disasters, transport disruptions, any change in the relevant statutory regulations, governmental actions or orders, or the occurrence of any other unforeseeable events which are beyond its control, GMH shall be exempted from its acceptance and/or delivery obligations for the duration of the disruption. If any delivery period confirmed by GMH in writing or any acceptance date confirmed by GMH in writing is exceeded by more than eight weeks as a result of the disruption, both parties shall be entitled to cancel the contract.

The Contracting Party shall be entitled to demand a penalty only if this has been separately agreed in writing. As a fundamental principle, GMH shall accept no claims for damage sustained by the Contracting Party as a result of default in delivery and/or acceptance, in particular as a result of culpable breach of contract, tort caused by negligence or for consequential damage.

The foregoing shall not apply if GMH has compulsory liability by law for the typical foreseeable damage in such contracts owing to intent or gross negligence in connection with warranties or infringement of material contractual obligations in cases of simple negligence.

The Contracting Party shall bear any additional costs resulting from interruption or delay in the work to be performed by GMH for which the Contracting Party is responsible.

In case of default in delivery for reasons beyond the control of GMH, GMH shall be entitled to store the item to be delivered at the expense of the Contracting Party and to demand reimbursement of these costs.

If the Contracting Party is responsible for provision of the means of transport for delivery and fails to do so at the contractually agreed time, GMH shall be released from its obligation to deliver by storing and insuring the items to be delivered at the expense and risk of the Contracting Party. Confirmation of acceptance by the carrier shall be deemed proof of delivery pursuant to the terms of the contract.

GMH shall be entitled to make part deliveries and part performance within a reasonable scope at any time.

**IV. Terms of Payment and Delivery**

Unless otherwise agreed, all GMH invoices shall be payable immediately.

All payments shall be remitted without any deductions free of charge for GMH to the place of payment specified by GMH in accordance with the written agreements between the parties. Payment periods shall be deemed observed if GMH is entitled to dispose of the payment within the agreed payment period.

The Contracting Party shall be obliged to check all invoices immediately on receipt and notify GMH of any complaints within a period of 10 days. On expiry of that period, the invoice shall be deemed duly accepted by the Contracting Party.

If it is not possible to transfer payment from the country from which the payment is to be made on the due payment date, the Contracting Party shall nevertheless pay the equivalent of the amount due into a bank in the country concerned on the agreed payment date. In the event of any deterioration in the exchange rate of any sums paid in a currency other than the one agreed, the Contracting Party shall be obliged to make a subsequent payment in settlement of the difference.

In case of default in delivery for which GMH is not responsible, payments shall be made as if the delay had not occurred.

If the Contracting Party defaults in its payment obligations in full or in part, it shall be liable – without prejudice to any other rights of GMH – to pay GMH interest on arrears at a rate of 8 percentage points per annum above the base interest rate as from the date of default, unless GMH proves that it has sustained higher damage.

Discharge of all obligations of GMH vis-à-vis the Contracting Party shall be dependent on compliance with the agreed terms of payment and other obligations of the Contracting Party vis-à-vis GMH.

The Contracting Party shall not be entitled to set off claims, exercise a lien or refuse performance, unless its claim for set off, lien or counter-performance obligation is undisputed or has been established as final and non-appealable by a court. GMH shall be entitled to avert the exercise of a lien by providing security, also in the form of a bank guarantee.

If GMH has reasonable grounds to doubt the solvency or creditworthiness of the Contracting Party and if the latter is unwilling/unable to pay in advance or provide appropriate security on request by GMH, GMH shall be entitled to cancel the contract.

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**Zertifiziert nach DIN EN ISO 9001:2015, BFUB Cert, zertifizierter ESN-Entsorgungsfachbetrieb für Handeln und Vermitteln**





## V. Passing of Risk

All deliveries shall be effected at the risk of the Contracting Party. GMH reserves the right to choose the transport route and transport mode. Any additional expenses resulting from a request for special shipment by the Contracting Party and any increase in freight rates occurring after conclusion of contract, any additional costs of rerouting or higher storage costs shall be borne by the Contracting Party.

## VI. Retention of Title

The goods shall remain the property of GMH until full satisfaction of all its claims against the customer (reserved goods). Reserved goods may neither be pledged nor assigned as security.

In case of any permissible resale of reserved goods of GMH in the ordinary course of business, the Contracting Party assigns as security to GMH as of now all future claims against its customers resulting from the resale until full settlement of all claims of GMH without any further declaration being required; the foregoing assignment shall also apply to any outstanding amounts from a current account or on termination of such business relations between the Contracting Party and its customers. If the reserved goods are resold together with other items without the agreement of a separate price for the reserved goods, the Contracting Party shall assign to GMH the share of its claim for the total price which corresponds to the invoice amount charged by GMH for the reserved goods; this shall take priority over the remaining share of the claim. The Contracting Party is authorised until further notice to collect the assigned claims from the resale; the Contracting Party is however not entitled to dispose of these claims in any other way, such as assignment.

On request by GMH, the Contracting Party shall notify its customers of the assignment and provide GMH with all necessary documents, such as invoices, and all necessary information for GMH to assert its rights against the customer. All costs of collection and any necessary intervention shall be borne by the Contracting Party. If the Contracting Party receives bills of exchange owing to its authorisation to collect the assigned claims resulting from the resale, title to these bills, together with the vested rights, shall pass to GMH as security. In lieu of the surrender of bills, the parties agree that the Contracting Party shall take them into safekeeping on behalf of GMH and shall then hand them over endorsed to GMH immediately. If the value of the claims assigned to GMH is to be paid to the Contracting Party by cheque or paid into the Contracting Party's bank, the Contracting Party shall be obliged to notify GMH of receipt and to transfer these sums to GMH immediately. Title to such cheques, together with the vested rights, shall pass to GMH immediately on receipt by the Contracting Party. In lieu of the surrender of cheques, the parties agree that the Contracting Party shall take them into safekeeping on behalf of GMH and shall then hand them over endorsed to GMH immediately.

If the Contracting Party or a third party processes or modifies the reserved goods or combines them with other items, any such processing, modification or combination shall be effected on behalf of GMH. GMH shall acquire direct title to the items produced from the processing, modification or combination. If that is not possible for legal reasons, GMH and the Contracting Party agree that GMH shall be the owner of the new item at all stages of processing, modification or combination. The Contracting Party shall store the new item on behalf of GMH with all due diligence and care. The items produced from the processing, modification or combination shall be deemed reserved goods.

If the goods are processed or modified or combined with other items which do not belong to GMH, GMH shall be entitled to co-ownership of a share in the new item which is equivalent to the value of the processed, modified or combined reserved goods in relation to the total value of the new item. If the new item is sold, the Contracting Party herewith assigns as security to GMH its claims against its customer resulting from the sale, together with all subsidiary rights, without any further declaration being required. The assignment shall, however, apply only to the sum which corresponds to the amount invoiced by GMH for the processed, modified or combined reserved goods. The share of the claim assigned to the supplier shall take priority over the remaining claim.

If the Contracting Party combines the reserved goods with real estate or movable property, the Contracting Party shall also assign as security to GMH the claim to which it is entitled as remuneration for the combination, together with all subsidiary rights, without any further declaration being required.

If the Contracting Party defaults in full or in part in discharge of its payment obligations or with the honour of any due bills or payment of due cheques, if it is overindebted or insolvent, or if a petition has been filed for composition or bankruptcy proceedings, GMH shall be entitled to take possession immediately of all goods to which it retains title and to enforce immediately all further rights resulting from retention of title; the same shall apply in case of any other material deterioration in the economic situation of the Contracting Party. The Contracting Party shall grant GMH or its authorised representatives access to its entire business premises during business hours. A demand for the surrender or repossession of goods does not constitute cancellation of the contract. GMH shall be entitled to realise the reserved goods with all due diligence and to satisfy its outstanding claims from the proceeds.

If the value of the security exceeds the value of GMH's claims against the Contracting Party from the current business relationship by a total of more than 20 %, GMH shall be obliged to release securities on demand by the Contracting Party at its discretion.

## VII. Liability

Unless otherwise specified above, GMH and any agents employed in performance of GMH's obligations shall be liable for claims for compensation filed by the Contracting Party owing to positive breach of an obligation, owing to breach of obligations during the contract negotiations and tort as follows:

1. Liability for personal injury pursuant to the statutory regulations.
2. Liability for damage to property is limited to EUR 250,000 per claim and EUR 500,000 in total.
3. No liability will be accepted for pecuniary damage.

The liability restrictions pursuant to 2. and the liability exclusion pursuant to 3. shall not apply in case of damage to privately used property where liability for the typical foreseeable damage in connection with such contracts is compulsory pursuant to the Product Liability Act or in cases of intent or gross negligence, or the infringement of material contractual obligations or the absence of warranted qualities.

## VIII. Applicable Law

The purchase and sale of non-ferrous metals in the Federal Republic of Germany are governed by the "Usancen des deutschen Metallhandels" published by Verband deutscher Metallhändler e.V. (Association of German Metal Traders) as amended from time to time. All transactions shall be governed solely by German law. The Hague Convention of 01.07.1964 relating to a Uniform Law on the International Sale of Goods and the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 are expressly ruled out.

## IX. Place of Performance, Legal Venue and Closing Provisions

If the customer is a registered merchant, sole legal venue – also for any legal proceedings concerning cheques and bills of exchange – shall be Goslar, Germany. The same legal venue shall apply if the Contracting Party has no general place of jurisdiction in the Federal Republic of Germany at the time of institution of the proceedings. The Contracting Party shall, however, be entitled to invoke any court with legal jurisdiction.

All agreements, irrespective of whether reached at the time of conclusion of contract or thereafter, must be made in writing in order to be valid. Any oral statements made by GMH employees shall become binding only if confirmed in writing by GMH.

The invalidity of any individual provisions of the contract shall not affect the validity of the remaining provisions. Should any provision be wholly or partially invalid, the parties shall immediately endeavour to achieve the economic result intended by the invalid provision in another legally admissible way.