

Terms and Conditions of Delivery and Payment of STEINERT UniSort GmbH

As at: April 2010

1. General Information, Conclusion of Contract

1.1 These business terms apply to all present and future contracts with the Buyer. This applies in particular to future orders that are placed by the Buyer and/or accepted by us verbally, by telex, fax or e-mail. These terms are deemed to have been accepted by the Buyer at the latest at the time of accepting the goods or service. We hereby expressly reject any deviating terms of the Buyer. Third party terms and conditions of business are not incorporated into the contract without our written consent even if they are held out against these terms.

1.2 Contracts come into being only on the basis of our confirmation of order. Amendments, collateral agreements or any warranties of certain characteristics must always be made in writing. This also applies to any cancellation of the requirement for the written form.

2. Quotation, Prices and Payment

2.1 Our prices apply ex works, plus value added tax at the statutory rate in application at the time of issuing the invoice, however, excluding any necessary packaging or assembly costs. If reference is made at the time of the order to illustrations, drawings or plans, then, unless otherwise expressly agreed, the dimensions and weight indications contained therein are merely approximate values. Slight deviations establish rights on the part of the Buyer only if tolerances were expressly excluded or the Buyer suffers an unreasonable detriment as a result. Otherwise we reserve the right, unless otherwise agreed, to undertake design modifications at all times; however, we are not obliged to undertake such changes to products already delivered. Furthermore, we comply with technical specifications given by the Buyer, in particular dimensions, weights and quality of workmanship according to the following standards: if the Buyer has special requirements and if these deviate from the standard data either quoted or offered in the catalogue, the data and details arising from these special requirements can only be based on our experience. Unless otherwise agreed, counter-claims of the Buyer are excluded if and to the extent to which such special requirements lead to a deviation from standard data quoted or in the catalogue by more than 20%.

2.2 Our price quotations are based on the cost situation prevailing at the time of issuing the quotation or, in the absence of a quotation, at the time of concluding the contract. If, in the event of an agreement for a fixed price, there is an unforeseeable increase in cost factors for which we are not responsible (wages, energy costs, input materials, ancillary/operating materials) before the date of delivery, we are entitled to adjust the prices accordingly. If the price adjustment exceeds the original price by more than 5%, the Buyer is entitled to withdraw from the contract without rights to compensation arising from the same.

2.3 We accept bills of exchange only by express agreement on account of performance. The costs of collection and bank interest and charges are paid by the customer or the Buyer.

2.4 In the event of default in payment on the part of the Buyer, we charge - without prejudice to other statutory rights - interest at an annual rate of 8% above the rate of interest for main refinancing transactions of the European Central Bank on the first banking day of a calendar half-year, plus any value added tax charged, unless the Buyer proves that actual damages are lower.

2.5 Each additional reminder letter sent to the Buyer after the first one shall be charged at a rate of 5 Euro (however, a maximum of 3 letters).

2.6 The Buyer has a right to set-off, withhold or reduce the price, even if he is making claims for defects or counterclaims, only if such counter-claims have final and binding legal effect or are undisputed. However, the Buyer is also entitled to withhold on the basis of counter-claims arising from the same contractual relations.

2.7 If circumstances become known after conclusion of the contract that are capable of having a detrimental effect on the creditworthiness of the Buyer, we are entitled, at our discretion, to require payment in advance or the furnishing of securities for receivables due or not due on the basis of all existing contracts and to refuse performance until the advance payment or furnishing of securities. If we fail to receive either an advance payment or securities within a reasonable period of time, we are entitled to withdraw from this and other existing contracts.

3. Delivery

3.1 Delivery periods quoted refer to the scheduled time of departure ex works. Fixed delivery dates must be expressly agreed at the time of placing/confirming the order. Agreed delivery periods are extended by a reasonable period of time in the event of unforeseeable impediments that are beyond our control such as e.g. labour disputes, business stoppages, force majeure, or delays in the delivery of necessary input materials, regardless of whether the impediments are suffered by us or our suppliers. If it becomes impossible for us to deliver as a consequence of these circumstances, both contractual parties are entitled to give notice to the contract for an important reason or declare withdrawal from the same.

3.2 Any delivery period begins at the earliest on the date of order confirmation. However, it does not begin under any circumstances before mutual clarification between the contractual partners of all matters of major importance for manufacturing and delivery, unless we are at fault in failing to contact the Buyer without delay to clarify these matters.

3.3 Adherence to our delivery commitment presupposes the prompt and proper performance of the duties of cooperation incumbent upon the Buyer. Otherwise we are entitled to set a new date for delivery, also under threat of withdrawing from the contract, in which case the new date set for delivery must be reasonable.

3.4 We are entitled to make reasonable part deliveries that may be invoiced separately. We can also deliver quantities that are higher or lower by up to 10% provided that this does not unreasonably burden the Buyer.

3.5 Delivery is made ex works, i.e. the Buyer bears all costs and risks of loading and transport. We do not take back packaging.

3.6 If we are in default with delivery, the Buyer may set us reasonable extension in writing in which to perform the contract. He may thereafter withdraw from the contract if it has still not been performed. If we are responsible for failure to adhere to confirmed delivery periods/dates or we are in default, the Buyer is entitled to compensation for default equal to 1/2% for each complete week of default, however, up to a maximum in total of 5% of the invoice value of the supplies and services affected by default. All further claims are excluded, unless default is due at least to gross negligence.

3.7 In the event of default in acceptance by the Buyer, we charge either the warehouse costs we have incurred or store the goods elsewhere at the Buyer's expense. The risk associated with the consignment passes to the Buyer at the time default occurs.

4. Reservation of Title

4.1 The goods we have delivered remain our property until all our present claims against the Buyer have been satisfied in full, the same applies to any future claims that arise in connection with the delivered goods. In the event that the Buyer has a current account, the reserved title acts as security for the claim to the balance of account.

4.2 Processing or transformation of the reserved-title goods is undertaken on our behalf as manufacturer as per §950 Civil Code (BGB). If our reserved-title goods are mixed with other goods by the Buyer by processing, combining or mixing, we acquire co-ownership of the new thing produced in the same proportion as the invoice value of the reserved-title goods to the invoice value of the other goods used. If our title is extinguished by processing, combining or mixing, the Buyer already now assigns to us any future rights of ownership accruing to him in the new item or thing to the amount of the invoice value of the reserved title goods. The rights of co-ownership arising hereunder are deemed to be reserved-title goods as defined in Article 4.1 which the Buyer shall store on our behalf with the requisite degree of care.

4.3 The Buyer is entitled to resell the reserved-title goods in the normal course of business as long as he is not in default. The Buyer already now assigns to us all accounts receivable out of this resale regardless of whether the reserved-title goods were sold before or after processing or whether they are combined with a piece of land or a movable object. If the reserved-title goods are resold after processing or together with other goods that do not belong to us, or if they are combined with a piece of land or a movable object, the account receivable by the Buyer from his customer is already now assigned to us in the amount of the invoice value agreed with us for the reserved-title goods. If goods are sold in which we have a co-ownership share as per Article 4.2, the receivable is assigned to us to the same extent as to which co-ownership accrues to us.

4.4 An assignment of the Buyer's claims against his customers as a result of the resale of the reserved-title goods, regardless of whether before or after processing, combination or mixing with movable objects or pieces of land is excluded if this has the effect of reducing the value of the total securities available to us on the basis of our receivables. This does not apply in the event that assignment takes place as part of a genuine factoring agreement and we are notified of co-operation with a factoring bank and given the name of the bank and notification of the accounts held there. In this event, our receivable shall become due immediately on payment or issuing of the credit note by the factor without regard to other agreements. The Buyer already now assigns to us his present and future claims against the factor arising from the purchase of resale receivables insofar as these concern the goods delivered by us. The Buyer undertakes to notify the factor of this assignment and to instruct the latter to undertake payment only to us.

4.5 Until our revocation at any time, the Buyer is entitled to collect receivables arising from the resale as per Articles 4.2 to 4.4. We shall not exercise the right to revoke this consent for as long as the Buyer continues to properly meet his payment obligations and there is no indication of any deterioration in the creditworthiness of the Buyer. At our request, the Buyer shall notify his customers of the assignment to us without delay and provide us with all information and documents required for collection. In the event of refusal, we are also entitled to notify the customers.

4.6 If the Buyer fails to meet his obligations on time, we are entitled to take immediate possession of the reserved title goods and, if appropriate, also the goods resulting from processing, combining or mixing.

4.7 We possess a lien on materials given to us for processing with regard to all still outstanding receivables arising from business relations with the Buyer. If we deliver items that we have processed before they have been paid for in full, the Buyer assigns title to the same to us to secure all still outstanding receivables. Articles 4.1 to 4.6, 4.8 to 4.10 apply accordingly.

4.8 If the material processed by us has been supplied to the Buyer by a third party who has reserved title, then the contingent right is transferred to us instead of title by way of security in such a way that we can acquire title to such material by satisfying the third party. If the Buyer transfers title to the material processed by us to a third party by way of security, the Buyer previously assigns to us his right of return transfer.

4.9 In the event that our equitable lien is extinguished for whatever reason, we acquire any rights of compensation available to the Buyer against third parties as substitute for our title or our co-ownership shares in the processed material.

4.10 We undertake, upon request and at our discretion, to release securities available to us if their value exceeds the receivables to be secured - insofar as these receivables are still outstanding - by more than 20%.

5. Complaints of Defects, Warranty, Compensation for Damages, Liability

We are liable for defects in the delivery, excluding all further claims, as follows:

5.1 New machines

5.1.1 We warrant conformity with all characteristics expressly warranted in writing, for design and production free of defects as well as for faultless material in such a way that parts (including software) that became unusable as a consequence of such defects or whose usability was considerably impaired shall, at your discretion, either be improved free of charge or new parts shall be delivered at our own expense and risk; however, duty unpaid, to the international destination or international port. Additional costs for airfreight or express shipments are always at the expense of the Buyer. The removal of defective and fitting of newly-delivered parts is undertaken free of charge by us or personnel authorized by us, insofar as it is inappropriate or unreasonable to expect the Buyer to undertake removal and fitting.

5.1.2 For improvement work and parts replaced and fitted, we give a warranty to the same extent as for the original item delivered. Parts that are replaced become our property.

5.1.3 We warrant that our products are free from defects for a period of one year from the date of delivery.

5.1.4 Defects must be notified to us in writing without delay. Defective parts must be sent carriage paid to us or to the delivering works without delay in accordance with our instructions.

5.1.5 The warranty period for improvement work and parts replaced and fitted ends with that of the original item delivered.

5.1.6 To undertake necessary improvement work or for the removal of defective and fitting of newly delivered parts, the Buyer must

a. grant the necessary time and opportunity,
b. provide auxiliary staff, devices and operating equipment and perform ancillary work. Extra costs incurred for working outside normal working hours are at the expense of the Buyer.

5.1.7 The warranty does not cover natural wear and tear or parts that, because of their material characteristics or their purpose, are subject to premature wear; moreover it does not extend to damage resulting from improper storage, treatment or use of unsuitable operating materials, defective construction work or substructure or unsuitable building foundation, chemical, electrochemical or electrical influences. The same applies to other circumstances that occur after the risk has passed which arise without any fault on our part.

5.1.8 The Buyer can only claim against us under the warranty if
a. erection and commissioning of the object delivered was performed by personnel authorised by us,
b. defects covered by warranty were notified to us in writing without delay,

c. our instructions regarding the treatment and maintenance of the object delivered were followed and, in particular, any prescribed examination was properly performed,

d. no improvement work was undertaken without our consent,

e. any spare parts fitted were our own original spare parts or parts authorised by us,

f. no unauthorised modifications were made on the object delivered.

Otherwise Article 8 applies.

5.1.9 Used and Reconditioned Machinery All warranty claims are excluded for used and rebuilt machinery unless, in exceptional circumstances, we have given a written warranty. All claims for warranty are excluded that go beyond the extent defined in any written warranty given.

5.3 Right of refusal and exclusion of warranty claims

5.3.1 We are entitled to refuse to eliminate defects without compensation for as long as the Buyer fails to perform his obligations.

5.3.2 All claims to compensation are excluded for damages that did not occur to the object delivered itself.

5.3.3 The Buyer is obliged to make every reasonable effort required to preserve any rights of recourse against third parties (e.g. documentation of the facts by railway official, certification of short-delivered quantities). If the Buyer breaches this duty or other duties of co-operation (which may also include a duty to mitigate damages), claims based on defects are excluded. However, this does not apply in the event of infringement of merely nonessential ancillary duties or if the duty or breach of duty entails no - or merely unsubstantial - economic or legal disadvantages for us.

5.3.4 Insofar as a defect has its cause in material provided by the Buyer, all warranties are cancelled. Furthermore, we are not liable for changes of form, cracks and similar or for impairments of dimensional and fitting accuracy as a consequence of the processing operation, unless these are due to gross negligence or intent on our part.

5.3.5 If material is delivered to us for processing, that the quantity received is deemed to be the quantity documented at the time of entering our works. The Buyer has no right of complaint for deviations of up to 3% of this quantity.

5.3.6 Upon further processing by the Buyer, all warranty for defects recognizable at the time of delivery is cancelled.

5.3.7 If we deliver products that we have not exclusively manufactured ourselves, we assume no liability for damages resulting from the fact that the material delivered to us was defective or did not correspond to the state of the art. We assign any claims accruing to us against our suppliers to the Buyer. As a result, we are released from all liability. The Buyer has no more extensive rights.

6. Buyer's Right of Withdrawal, Rescission

The Buyer may withdraw from the contract or declare rescission by written declaration only
a. if performance of the contract becomes completely impossible for us. In the event of partial impossibility, the right of withdrawal exists only if the part delivery is verifiably of no use to the Buyer; otherwise he may require a reasonable reduction in the purchase price. If impossibility arises during default in acceptance or through the fault of the Buyer, the latter remains obliged to counter-performance. If neither contractual party is responsible for impossibility, we are entitled to receive the part of the purchase price that corresponds to the part we have performed.

b. if the Buyer can claim the full amount of default compensation as per Article 3.6 and if he sets us a reasonable extension after this time expressly declaring the fact that he shall withdraw from the contract after this extension has expired without issue and if he proves that we have failed to comply with the extension for reasons under our responsibility.

c. The Buyer can require rescission of the contract if the Buyer has set a reasonable extension in writing for elimination of a defect for which we are responsible and have acknowledged in accordance with Article 5.1, and that we have attempted to improve unsuccessfully, with the express declaration that he rejects further attempts at improvement after the period has elapsed and if it was our fault that this extension was not complied with.

d. In the event of b) and c), the Buyer can only withdraw or require rescission if he can show that as a consequence of the delay his interest in the delivery is greatly diminished.

e. Otherwise Article 8 applies.

7. Right of Rescission

We may withdraw wholly or partly from the contract if unforeseeable events effect a major change in the economic significance or content of performance or have a considerable effect on our business and/or if there is a major deterioration in the financial circumstances of the Buyer. This also applies even if an extension of the delivery period was initially agreed with the Buyer. If we intend to exercise the right of withdrawal, we shall notify the Buyer without delay after becoming aware of the consequences of the event.

8. Scope of Buyer's Rights and Claims

8.1 We are liable for intent or gross negligence and for the breach of essential contractual duties for which we are at fault. Moreover, we are fully liable under the regulations of the product liability act (Produkthaftungsgesetz).

8.2 Independently thereof, we are always liable if, and to the extent to which, our existing manufacturer's liability insurance pays compensation. Our manufacturer's liability insurance is governed by the general insurance terms of third party liability insurers (Allgemeinen Versicherungsbedingungen für Haftpflichtversicherer (AHB)).

8.3 In the absence of warranted characteristics, we are liable for damages that occurred to the subject matter of delivery; we are liable for damages that did not occur to the subject-matter of delivery itself only if the warranty was given for the express purpose of protecting the Buyer against the damage that has occurred. Warranted characteristics are solely those expressly described as such in the text of the contract.

8.4 Insofar as we are liable for gross negligence or for culpable breach of essential contractual duties, the extent of liability is limited to the damages that occurred directly to the delivered object itself.

8.5 In the event of a merely negligent breach of duty by us or by our agents, our liability is always limited to the contractually typical foreseeable damage.

8.6 All further rights and claims not listed in these terms or in the text of the contract are excluded. This applies in particular to more extensive contractual and statutory claims to compensation.

9. Non-assignability of Contractual Rights

The Buyer may not assign his contractual rights to third parties without our express written consent.

10. Place of Performance and Court of Jurisdiction

Place of performance is Zittau. Court of jurisdiction for complaints against us is exclusively Zittau. For complaints against the Buyer - also based on cheques or bills of exchange, Zittau is agreed as court of jurisdiction in addition to the statutory courts of jurisdiction in the event that the other party is a registered merchant, legal entity under public law or other public law special fund. We are also entitled to bring an action before the court at the registered office of the Buyer. Furthermore, Zittau is court of jurisdiction in the event that the Buyer relocates his place of residence, registered company office or usual place of residence out of the territory of the Federal Republic of Germany after conclusion of the contract or his place of residence or registered company office is unknown at the time of bringing the claim.

11. Applicable Law and Binding Nature of the Contract

11.1 German law applies to the contractual relations thereby excluding the application of the UN Convention on Contracts for the International Sale of Goods.

11.2 If any part of the contract is invalid, this shall not affect the remainder of the contract provided that the invalidity does not concern the fundamental principles of the contract. An alternative reasonable provision shall apply instead of the invalid provisions by way of adjustment that comes closest to the original economic intention.