

General terms and conditions of Aluminium Féron GmbH & Co. KG

§ 1 Scope of application

1. Our General terms and conditions apply exclusively; we do not accept opposing conditions or those deviating from our General terms and conditions of the customer unless we have expressly agreed to their application in writing. Our General terms and conditions apply also if we execute the delivery to the customer without reservations in the knowledge of opposing conditions of the customer or conditions deviating from our General terms and conditions.
2. All agreements made between us and the customer for the purpose of the execution of this Agreement are documented in writing in this Agreement.
3. Our General terms and conditions only apply for business persons in terms of § 14 BGB (German Civil Code). They also apply for all future business with the customer.

§ 2 Offer and formation of contract

1. Our offers are subject to change and non-binding, unless they expressly stipulate other terms. For the documents associated to the offers, such as brochures, illustrations, quotes, drawings and other documentation we reserve the right of proprietorship, copyright and the rights pertaining to the Patent and Utility model act. Respective documentation may not be utilised, duplicated or provided to third parties without our consent. If the order is not awarded to us, they have to be returned to us immediately. This also applies for such written documentation which is labelled "confidential".
2. A contract is only formed with our customers once we have accepted the order of the customer in writing by issuing an order confirmation or upon the execution of the delivery or service. The period of acceptance for us is 4 weeks following the receipt of the order.
3. Quality or shelf life guarantees, agreements regarding the quality or declarations regarding the usage of the delivery item as well as subsidiary agreements which occur prior to our order confirmation are only valid in case of doubt if we confirm them in writing. Agreements as well as specifications in our offers regarding the quality or the utilisation of the delivery item have priority over the specifications in our brochures, demonstration machines, drawings, descriptions, price lists and other documentation. Unless otherwise agreed, the suitability of the products supplied by us for specific processing as well as intended usages is not subject of the agreement. The customer is exclusively obligated to test our products for their specific intended usage, e.g. regarding processing conditions and protective film covers.

4. Depending on the type of the product we are entitled to deviations pertaining to weight and quantity of up to 10% with respect to the entire order amount as well as individual partial deliveries. A thickness tolerance of +/- 8 % and a format tolerance of +/- 1.5 mm are expressly reserved.
5. Our employees, trade representatives or other distribution agents are not authorised to waive the requirement of a written order confirmation or to make commitments deviating in content or to issue warranties.

§ 3 Information regarding import / export

1. Certain products and services may be subject to special import / export controls and/or limitation under certain circumstances. The customer is exclusively obligated to check and comply with such regulations. If applicable, these also include the acquisition of necessary permits pursuant to public law as well as the acquisition of the documents required for the import / export of certain products.
2. The customer is obligated to inform us at the time of the order if he requires a certificate of origin.
3. The customer acknowledges that a product may not be exported or on-sold unless the customer has previously ensured the compliance with all statutory provisions.

§ 4 Prices / terms of payment

1. Unless stipulated otherwise in the order confirmation, our prices apply "ex works". The prices are excluding VAT in the respectively applicable amount and other country-specific levies in case of deliveries abroad as well as the costs for our customary packaging, other dispatch fees possibly covered by us in exceptional cases, delivery costs etc.
2. The agreed prices are considered base prices. They are fixed prices unless a change occurs in raw materials or auxiliary material prices, wages and salaries, freight, taxes, custom duties and levies and other direct or indirect charges up to the date of the invoicing. If such changes occur we are entitled to newly determine the prices to be invoiced according to these changes, which we shall demonstrate upon the request of the customer. Any ancillary fees, levies etc. are the responsibility of the customer unless opposed by mandatory legal regulations. We are entitled to demand immediate reimbursement of expended freight and other costs.
3. The deduction of a discount is only permissible upon special written agreement.

4. We are entitled to initially off-set payments against the customer's older debt despite contrary instructions of the customer. If costs and interest have already been incurred we are entitled to offset the payment initially against the costs, then the interest and ultimately against the main performance, even if the customer determines otherwise. If financial aid exists, the settlement of the main performance occurs first, followed by interest and costs.
5. If we become aware of circumstances which place the solvency and creditworthiness of the customer in doubt, particularly if he does not honour a cheque or bill of exchange, if he ceases payment or if the application for the commencement of insolvency proceedings becomes known we are entitled to call on the entire unpaid balance, even if we have accepted cheques or bills of exchange. In this case we are also entitled to demand prepayments and provision of security. Unless this is fulfilled or fulfilled in a contestable manner, we are not obligated to continue our services. This also applies in case on delayed payment of a preceding delivery. Agreed discounts shall not be granted if a due balance in our favour has not been settled at the time of payment. If the above mentioned circumstances become known and/or in the event of an application to commence insolvency proceedings, upon the expiration of the deadline, following the provision of an appropriate period of notice during which the other party has to simultaneously provide consideration or surety for the service at his discretion, we are entitled to withdraw from all orders upon the fruitless expiration of the period of notice. In the event of a withdrawal the customer has to reimburse us for the incurred, verified costs. The assertion of further compensation is not affected by this regulation.
6. Unless stated otherwise in the order confirmation, the purchase price is due and payable net (without deductions) within 20 days from date of invoice. If the customer is in default, we are entitled to demand default interest of 8% above the respective basic interest rate p.a. If we are able to verify a greater damage caused by default we are entitled to assert such claim. However, the customer is entitled to prove to us that we have not incurred damage due to the default or an essentially lesser damage.
7. The customer is only entitled to off-setting if his counter claims were legally determined, are uncontested or accepted by us. He is furthermore only entitled to a right of retention in as far as his counter claim is based on the same contractual relationship.

§ 5 Delivery period and conditions

1. The commencement of delivery times stipulated by us implies the clarification of all technical issues.
2. The compliance with our delivery obligation furthermore implies the on-time and proper fulfilment of the customer's obligations. The plea of the unfulfilled contract remains reserved.

3. If the Purchaser is in default of acceptance or if he violates other obligations to participate, we are entitled to demand compensation for incurred damages including any additional expenses. Further claims remain reserved.
4. If the above conditions mentioned in paragraph 3 exist, the risk of accidental destruction or accidental deterioration of the merchandise are transferred to the Purchaser at the moment he is in default of acceptance or payment.
5. If a delay of delivery owed by us is based on the culpable violation of an essential contractual obligation, we are liable according to the statutory provisions; however, our liability is limited to the foreseeable, typical damage. Compensation claims in case of slight negligence are excluded. For the remainder we are liable for a flat-rate default compensation of 3% of the delivery value for every completed week in case of a delay in delivery, however at a maximum of 15% of the delivery value.
6. Force majeure or disruptions of operation occurring to us or our suppliers, which temporarily prevent us through no fault of our own to deliver the subject of purchase at the agreed date or within the agreed period, alter the agreed dates and periods by the duration of the impairments of performance based on these circumstances. If such interruptions lead to a delay of performance of more than 4 months, the customer may withdraw from the agreement. Other rights of withdrawal remain unaffected.
7. We are entitled to reasonable partial deliveries prior to the expiration of the delivery period. Partial deliveries and invoices for functioning units are admissible.
8. If the dispatch of the delivery is delayed due to circumstance for which we are not accountable, we are entitled to invoice a storage fee of 0.5% of the invoice amount for each started month, unless the customer proves a lesser damage. Further claims remain unaffected - e.g. all claims resulting from delay.
9. We are entitled to demand a binding determination in case of call orders or the agreement of terms, finished lot sizes and acceptance dates at the latest 3 months after order confirmation. If the customer does not comply with this demand within 3 weeks we are entitled to set a period of grace of 2 weeks and withdraw from the agreement and/or demand compensation upon the expiration of this deadline.
10. If the customer does not fulfil his purchase obligations we are not bound by the regulations regarding the sale without resort to legal process but are at liberty to sell the delivery items following prior notification of the customer, notwithstanding other rights.

§ 6 Transfer of risk / packaging costs

1. Unless stipulated otherwise in the order confirmation, the delivery is "ex works".
2. Transport and all other packaging - except reusable packaging - according to the packaging ordinance are non-returnable. The customer is obligated to ensure the disposal of the packaging at his expense.
3. If the customer so desires, we shall cover the delivery with transport insurance; the customer is responsible for an incurred costs.
4. The risk of accidental destruction and accidental deterioration of the goods is transferred to the customer upon handover, in case of sale by dispatch with the delivery of the item to the forwarding agent, the carrier or any other person or organisation assigned with the dispatch of the item.
5. The handover also applies if the customer is in default of acceptance.
6. If a delivery has not been agreed upon, the risk is transferred to the customer as soon as the goods were handed over to the person executing the transport or as soon as the goods have left our premises for the purpose of transport. This applies regardless whether we execute the transport with company-own vehicles or third party carriers employed by us and regardless whether or not we are responsible for the transport costs. The loading of the goods is the responsibility of the customer. Clauses such as "free delivery ..." or similar clauses are merely designed to deviate the regulation regarding transport costs, but do not alter the above regulation pertaining to the transfer of risk.
7. If the dispatch is delayed due to reasons attributable to the customer, the risk is transferred to the customer at the day of provision of the goods.

§ 7 Warranty

1. Warranty rights of the customer imply that he has properly complied with his obligations regarding inspection and requirement to give notice of defects in accordance with § 377 HGB (German Commercial Code). The customer has to report obvious defects and those evident and typical defects recognisable by way of proper inspection - if such an inspection is feasible in the course of business - in writing within 14 days. Obvious defects also include the lack of documentation as well as significant, easily discernible damage to the goods. Obvious defects also include cases whereby another item or a lesser amount were delivered, unless the prerequisites for the provision of a partial service and delivery are provided.

The customer is obligated to provide us with a detailed written description of the detected defects. The customer has to object to defects which only become obvious at a later date within 4 weeks from the date of discovery. In case of failing to comply with the period of objection the warranty for the affected defects is excluded. By processing received complaints and inspecting the goods we do not waive our right to assert delayed or incomplete notices of defect.

2. In case of violation of the duty to inspect and make a complaint, the goods are considered approved with respect to the respective defect.
3. The statute of limitation for warranty claims is 1 year, calculated from the date of transfer of risk.
4. In the event of a defect we are initially entitled to remedy the defect or supply defect free goods at our discretion. Defects of the delivered goods including any documents and other records shall be remedied by us within 1 year following the receipt of a respective notice from the customer.

The customer is entitled to withdraw from the contract or to reduce the purchase price in the event of a failed subsequent fulfilment at his discretion. The subsequent fulfilment is deemed to have failed if two attempts for subsequent fulfilment have failed. A failure of the subsequent improvement can only be assumed if we were given sufficient opportunity for subsequent improvement or replacement delivery without achieving the desired result, if the subsequent improvement or replacement delivery is impossible, if we have refused or unreasonably delayed it, if justified doubts exist with respect to the chances of success or in case of unreasonableness for any other reason.

In the event of replacement delivery the customer is obligated to relinquish the defect item. Further claims in case of malicious disguise of defects or the assumption of a warranty remain unaffected.

5. If, for the assertion of rights, the customer is obligated to provide us with an appropriate notice period for the provision of our services, the period of notice is only appropriate if it is not shorter than 20 days. We are entitled to refuse subsequent fulfilment if it is only possible with disproportionate costs. Cost are considered to be disproportionately high if the total expenditure for subsequent fulfilment is greater than 30% of the market value of the sold goods. Further rights of the customer remain unaffected.
6. We are responsible for the expenditure for the purpose of subsequent fulfilment, particularly transport, shipping, labour and material costs, unless they are increased by the fact that they were provided to a location other than the place of fulfilment. Replaced parts become our property.

7. If the defect cannot be detected, the customer is responsible for the costs of the inspection.
8. Warranty claims against us are only owed to the direct customer and are not assignable.
9. In case of insignificant defects the customer is not entitled to a right of withdrawal; he is also obligated to accept the delivery.
10. If the period for subsequent fulfilment has expired unsuccessfully we are entitled to provide the customer with a period of notice of one month to assert his further warranty rights against us. If the customer does not issue such a declaration within this period of notice, his warranty rights are excluded; this only applies if we have explicitly pointed out this legal consequence with reference to the time limit in the request.

§ 8 Liability

1. Unless otherwise determined in these General terms and conditions, the customer's claims for the compensation of expenditures of any type, regardless of the legal reasons, (hereinafter referred to collectively as "compensation claims") are excluded. We are therefore not liable for the loss of profit or other pecuniary losses of the customer.

The liability disclaimer according to paragraph 1 does not apply for damages

- resulting in the violation of life, body or health based on at least negligent breaches of duty owed by us,
 - for which we are compulsively liable according to the Product Liability Act,
 - which are based on an at least gross negligent breach of duty by us or our legal representatives or vicarious agents.
2. The liability disclaimer furthermore does not apply in case of damages which are based on an at least negligent violation of a cardinal obligation essential to the agreement, if the violation jeopardises the realisation of the purpose of the agreement. In case of defects, such a threat only exists in case of significant defects. In case of the violation of cardinal obligations essential to the agreement our liability is limited to the foreseeable damage typical to the agreement with the exception of intent or gross negligence or damages which at least result in the negligent violation of life, body or health.
 3. If our liability is excluded or limited, this also applies for the personal liability of our employees, workers, representatives and vicarious agents.
 4. Regardless of fault, any liability in case of malicious non-disclosure of the defect or pertaining to the acceptance of warranty or a procurement risk and according to the Product Liability Act remains unaffected.

§ 9 Reservation of title

1. All our deliveries and services occur under reservation of title. The property is only transferred to the customer once we have been satisfied with respect to all of our claims from the business relationship as well as those related to the purchased object. In the event of the customer's conduct contrary to the agreement, particularly in case of default of payment, we are entitled to retrieve the merchandise. The retrieval of the merchandise does not constitute our withdrawal from the agreement, unless we have declared so explicitly in writing. The seizure of the merchandise by us always constitutes a withdrawal from the agreement. Upon retrieval of the merchandise we are entitled to its utilisation; the revenue from the utilisation is off-set against the customer's obligations less reasonable utilisation expenses.
2. The customer is obligated to treat the merchandise carefully; he is particularly obligated to insure the goods at new value against fire, water and theft at his own expense. If maintenance and inspection work has to be carried out, the customer has to implement those expertly at his expense and in due time.
3. The customer may neither pledge nor transfer the delivery item as security while we retain proprietary rights. In case of seizure as well as confiscation and other injunctions by third parties the customer is obligated to inform us immediately to allow us to file a complaint according to § 771 ZPO (Code of Civil Procedure). In such an event the customer has to provide us with the necessary assistance to assert our rights. The customer is responsible for the costs of the required interventions. Particularly if the third party is not able to reimburse us for the judicial and extra-judicial costs of a petition according to § 771 ZPO (Code of Civil Procedure), the customer is liable for the damage we incurred.
4. The processing or reconstruction of the reserved goods by the customer is always performed on our behalf. If the reserved goods are processed or intermingled, the reserved ownership continues in the processed or intermingled goods. If the reserved goods are processed or inseparably intermingled with object which do not belong to us, we obtain ownership in the new item at the ratio of the invoice value of the reserved goods (final invoice amount incl. VAT) compared to the invoice value of the other utilised goods at the time of the processing or intermingling. The thus created co-ownership rights apply as reserved goods in terms of this condition. If our goods are combined or inseparably intermingled with other movable objects to one uniform object and if the other object is to be considered the main object, it is deemed agreed upon that the customer assigns to us the proportionate co-ownership if the main object belongs to him. In the above described case the customer today assigns to us his title to the processed, connected or intermingled goods. The handover is replaced by the fact that the customer stores the processed, connected or intermingled object on our behalf. For the remainder, the same conditions as in case of the reserved goods apply for the items created by the processing, usage and intermingling.

5. The customer is entitled to process and sell the reserved goods in the course of normal business, unless he is in default of payment toward us, has ceased payment or insolvency proceedings pertaining to his assets have been filed. The customer today assigns to us the claims arising against purchasers or third parties from the sale of the goods together with all rights in the amount of the invoice incl. VAT. We accept this assignation. If the reserved goods are sold by the customer following processing / connection - together with goods which are not owned exclusively by the customer, the customer today assigns the claims arising from the on-selling in the amount of the value of the reserved goods to us together with all ancillary rights and ranking prior to all remaining creditors. We now accept this assignation. The customer is entitled to collect these claims also following the assignation. Our option to collect the claims ourselves remains unaffected from this clause; however, we are obligated to not collect the claims as long as the customer properly complies with his payment and other obligations, is not in default of payment and in particular if an application for the commencement of insolvency proceedings has not been filed, if payment has been ceased or if justified doubts regarding the solvency and creditworthiness of the customer exist. The customer is not entitled to the assignation of the claim under any circumstances.
6. We can demand that the customer discloses to us the assigned claims and their debtors, provides all details necessary for the collection, supplies the respective documentation and informs the debtors of the assignation. Any bills of exchange provided by third party purchasers have to be transferred to us.
7. The customer also assigns to us the claims regarding the surety of our claims against himself, which arise against a third party based on the connection of the merchandise with a property. We are obligated to release the securities owed to us upon the customer's request to the extent as the realisable value of our sureties exceeds the secured claim by more than 10%; the choice of the sureties to be released is at our discretion. If we retrieve the goods by mutual agreement, credit is only granted in the amount of the respective current value.

§ 10 Place of jurisdiction / place of fulfilment

1. The laws of the Federal Republic of Germany apply. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
2. Exclusive place of jurisdiction for all disputes arising from any agreement is our registered address of business. The same applies if the customer does not have a general place of jurisdiction in Germany or if the place of abode or usual whereabouts is unknown at the time of the claim.

3. Place of fulfilment is our registered office unless otherwise determined in the order confirmation.
4. Regardless of any further legal regulations, the suspension of the statute of limitation also applies if the suspending proceedings have not been continued in the matter for more than four weeks. The recommencement of the statute of limitation of the customer's claims requires our explicit written confirmation in any event.
5. If one of the conditions of these General terms and conditions is or becomes ineffective, the effectiveness of the remaining conditions or agreements remains unaffected. The ineffective condition shall be replaced by an effective agreement, which is closest to the economic purpose of the ineffective condition.

§ 11 Industrial property rights

1. If we are obligated to deliver according to drawings, models, samples or under pledging of provided parts of the customer, the customer is responsible to ensure that third party proprietary rights in the country of destination of the goods are not violated by this act. We shall point out to the customer all rights known to us. The customer is obligated to exempt us from all third party claims and compensate us for any damage incurred. If a third party prohibits us from manufacturing or delivering by evoking proprietary rights belonging to him, we are entitled - without examining the legal situation - to cease processing up to the clarification of the legal situation between the customer and the third party. If the continuation of the order is no longer feasible for us due to the delay, we are entitled to withdraw from the agreement.
2. Any drawings and samples provided to us which have not led to an assignment shall be returned at request; otherwise we are entitled to destroy them after 3 months from the date of the offer. This obligation applies respectively for the customer. The party entitled to the destruction has to inform the contractual partner of his intention to destroy in advance in due time.
3. We are entitled to copy rights and, if applicable, industrial property rights, particularly all usage and exploitation rights to the models, moulds and devices, drafts, drawings and the delivery item designed by us or a third party commissioned by us.