

General terms and conditions

TALUX GmbH

1. PREFACE

a) Our deliveries and services in context of commercial dealings with entrepreneurs (German Civil Code, Sec. 14), legal entities of public law and special funds under public law, are conducted exclusively on the basis of the following general terms and conditions. The general terms and conditions also apply for all future deliveries and services to the client without requiring a separate or explicit reference.

b) General terms and conditions of the client or of third parties do not apply even when we have not contradicted their validity separately or explicitly.

2. CONTRACT CONCLUSION, OBJECT OF AGREEMENT

a) Our quotations are non-binding. Contracts do only turn into effect with an order from the client and when a written order confirmation is issued by us in return.

b) Additions to or changes of the concluded agreements including these general terms and conditions require written form. Except managing directors or authorized representatives our employees are not entitled to make any verbal arrangements deviating from these agreements.

c) Technical consultations are not subject matter of the delivery contract. We are only liable for erroneous consultation when the consultation was explicitly contracted and the consultation was done in written form. Oral information are non-binding.

d) The appropriate and competent handling and installation of our products is always and exclusively in the liability of the client.

e) All given specifications to the subject of the delivery (e.g. weights, dimensions, tolerances, load-bearing capacities and technical data) as well as our descriptions of the same in drawings and illustrations are only approximately representative unless an exact match has been explicitly agreed upon.

f) Construction proposals, drafts, drawings, tools and other documents that are provided or delivered by us remain in our property and may not be made accessible to third parties or reproduced - in parts or in full - without our consent.

g) The complete, correct and timely creation or provision of implementation documents is solely in the liability of the client. Any delays, damages, losses or additional cost caused by improper provision of such documents are subject to the liability of the client.

3. PRODUCT ATTRIBUTES AND INSTALLATION INSTRUCTIONS

a) Profiles and accessory parts in the version „mill-finished“ might have slight colour differences (stains), extrusion traces and small scratches in their surface. These conditions can not be avoided due to nature of the aluminium alloy, its production- and further handling processes. These conditions however do not affect the quality of the aluminium and therefore do not present a defect or a reason for complaint. Powder-coated profiles are protected against scratches only on the surfaces which will be visible after installation. Potential scratches in the surfaces which will not be visible after installation do not present a defect or a reason for complaint.

b) Depending on the selected profile or system, length tolerances in the range of +/- 10mm are possible due to the manufacturing processes. These tolerances do not present a defect or a reason for complaint.

4. DELIVERY

a) If not agreed upon and determined differently, the place of fulfillment for our deliveries is our factory.

b) Upon the client's request, we send the goods to a designated place of destination. In this case, the client bears the cost and risk of the delivery. If not agreed upon and determined differently, the type of packaging and transport is at our own discretion.

c) In case of an agreed delivery to a construction site, the client has to ensure that proper access routes are available and that a swift discharge is possible. Otherwise the client bears the liability for caused damages and additional cost and efforts.

d) Delivery lead times that are communicated by us are non-binding and have to be understood as best estimates unless they have been agreed upon explicitly beforehand. Scheduled deliveries and express deliveries always have to be agreed upon specifically and in written form. Agreed delivery dates always refer to the provision of the goods at the place of fulfillment or - in case a delivery was requested - to the point of time when the goods have been handed over to the forwarder.

e) Delivery times will extend accordingly if the client fails to provide documents or information in time which are necessary for the fulfillment of the order. After expiry of an appropriately set time limit, we have the right to withdraw from the contract.

f) We are entitled to execute partial deliveries to a reasonable extent. A client's objection against a partial delivery does not release him from his duty to accept the delivery of the remaining ordered goods as defined by the purchase agreement. Exceptions thereof apply when the remaining goods show considerable deficiencies or the reception of the remaining goods is unacceptable for the client due to considerable deficiencies of the partial delivery.

g) We do not take responsibility for the impossibility of deliverance or delay in delivery, so long as caused by force majeure or other unforeseeable circumstances (e.g. all forms of disruption in operations; difficulties in obtaining material and energy; delays caused by transit problems, strikes or legal lockouts; shortage of labour, energy or raw materials; difficulties in obtaining official authorisations, official provisions or the absence, not orderly or non timely delivery by the suppliers) that could not have been predicted during the period of contract signing, and which have not been caused by us. The agreed delivery period is extended by the duration of the circumstances preventing delivery and an appropriate start-up period. In case the delivery becomes impossible or will be intolerably impeded due to an event outlined above, we have the right to withdraw from the contract.

h) If the delivery or the dispatch is delayed due to a circumstance that the client is responsible for, the transfer of risk takes place at the point of time in which the goods are ready for pick-up or delivery and the client has been informed about the readiness. Storage cost after the transfer of risk shall be borne by the client.

i) Packaging that is brought into circulation by us will be taken back at our operating facilities in accordance with the legal obligations and as long as they are delivered emptied, unpolluted and sorted.

5. PRICES AND PAYMENT TERMS

a) All prices shall be quoted ex works exclusive of freight cost, packaging cost and value added tax.

b) If for orders with a designated delivery time of more than 3 months or for successive delivery contracts with a term of more than 3 months from the order confirmation to the delivery of the material, the raw material- or energy cost increase by more than 15%, we shall have the right to adjust the contracted prices accordingly. This does not apply when fixed prices are agreed upon. Upon request by the client, we shall present appropriate documents for a review of the price adjustment.

c) If the net price increases by more than 15% eventually, the client shall have the right to withdraw from the contract. The withdrawal shall be declared in written form within 14 days from the information about the price adjustment.

d) Our invoices are due immediately after receipt of the delivery at the place of our registered office. Discounts and other rebates require an explicit agreement.

e) If a delivery or another precondition of maturity is delayed due to circumstances that lie in the responsibility of the client, the maturity arises at the point in time in which the maturity would have arisen without the delay. The same applies if an agreed call date has passed or - if no call date was agreed upon - when the goods were not called off within 3 months since the closure of the purchase contract.

f) We shall not be obliged to accept bills, cheques and other promises to pay. Bills of exchange or cheques are accepted only on account of payment; i.e. the payment is only to be regarded as effected when the amount of the cheque has been credited to our bank accounts.

g) If an invoice is not paid within 30 days after receipt of the invoice or latest within 30 days after receipt of the goods, the client is in default of payment and we shall have the right to claim default interest and compensation for further damages caused by delay. In the event of a default of payment by the client, we shall have the right to make further deliveries dependent upon advance payments or collateral securities. Furthermore we shall have the right to withdraw from the contract in accordance with the legal obligations.

h) If the client was granted a payment term, all outstanding claims are getting due immediately when he gets in default of payment for a single claim of us towards him. The same applies when the client stops payments, becomes overindebted, his assets are subject to bankruptcy proceedings, the opening of a bankruptcy proceeding is refused due to the lack of assets or circumstances become known which justify reasonable doubts about the creditworthiness of the client. In these cases we shall have the right to fulfill outstanding deliveries dependent upon advance payments or collateral securities by the client.

i) Potential counterclaims of the client can only be charged up against if these claims have been formally accepted by us or if they were acknowledged as legally binding. The right to refuse services and rights of retention shall be excluded as long as these do not base on the same contractual basis as our payment claims. In case of a justified notice of defect, the client shall only withhold payment to an extent which is justified by the magnitude of the defect.

6. RETENTION OF TITLE

a) All delivered goods remain our property (reserved goods) until the client has paid all current and future claims related to the business relation. The client stores the reserved goods free of charge; he shall treat the goods carefully and insure them against all existing risks. In case of violation we shall have the right to demand the immediate hand out of the reserved goods.

b) The client shall be entitled to process and or resell the conditional goods in its regular course of business until a revocation is expressed by us. The authorization for resale lapses if the client has negotiated an assignment prohibition with its buyers. The client has the obligation to reserve our rights with the help of a retention of title in case of a credited resale of the conditional goods.

c) The treatment and processing of conditional goods by the customer is always undertaken on our behalf, but without liability being assumed by us. We are entitled to the ownership or co-ownership of the new originated product or goods. If our property ceases to exist as the result of the incorporation, intermixing or processing, the client herewith assigns to us his rightful ownership or contingent interest in the new stock or article to the extent of the invoiced value of the conditional goods, in the case of processing in proportion of the invoiced value of the conditional goods to the invoiced value of the other goods used, and shall hold the same free of charge on our behalf. If the acquisition of (co-) ownership is lawfully excluded e.g. in case of connection of the conditional goods with the plot of a third party – the client herewith assigns to us his claims towards the buyer for the goods having taken the place of the incorporated or intermixed good in full or to the extent of our percentage co-ownership of the good.

d) The customer herewith assigns to us all claims including securities and ancillary rights that accrue to it against the end user or third parties with or in connection with the resale of goods subject to retention of title be it in reworked or unworked condition. In case of a resale of conditional goods in a reworked condition on which we only have co-ownership, the assignment relates to the primary partial share, which corresponds to the percentage share of our co-ownership of the goods.

e) The customer is authorized to collect the receivables assigned to us as long as he meets his payment obligations towards us. If the customer defaults in payment, we can revoke the collection authority and demand that the client notifies its creditors about the assignment and provides us with all necessary information and documents for the collection of the receivables.

f) The client may not pledge or transfer the conditional goods as security. If third parties take hold of the conditional goods, in particular by garnishment, the customer has to immediately advise about our property and to inform us to enable the assertion of the property rights. The cost for the legitimate protection of our interest is borne by the client.

g) If the value of all collaterals exceeds the amount of our claims by more than 20% we release a corresponding part of the collaterals upon request of the client.

7. WARRANTY

a) The client shall inspect the delivery immediately upon receipt for its completeness, correctness, quality and conformity with the delivery documents. Obvious defects of the delivery have to be reported to us immediately and latest 7 days after arrival of the goods in writing. Hidden defects have to be reported to us latest 7 days after discovery in writing. Otherwise the delivery shall be deemed approved. Complaints and assertions of alleged claims have to be made before processing, incorporation or intermixing of the goods and within the warranty period. The client has to give us the opportunity to immediately check the complaint matter, especially by giving us access to inspect the damaged goods and its packaging ourselves. If such allowance is not made, we are freed from the obligation to correct the defect. The assumption of costs of commissioned consultants requires a written arrangement in each case.

b) Claims for defects are also excluded for cases of natural wear and tear or damages occurred after transfer of risk due to incorrect handling, negligent treatment, excessive use, use of inappropriate equipment, defective construction work, inappropriate subsoil, material changes due to climatic conditions or other special external influences, which are not preconditions included under the terms of the contract. If improper modifications or repairs are made by the customer or third parties, they are not entitled to assert claims for damages on the consequences resulting thereof.

c) In case of justified notices of defect we shall have the right for supplementary performance within an appropriate time. At our discretion, the supplementary performance shall take the form of a remediation of the defect or delivery of flawless goods. If the supplementary performance is not successful, the customer may rescind the contract or reduce the price, without prejudice to any claims for damages according to §8.

d) Claims by the customer regarding expenses for the purpose of rectification, particularly transport, travelling expenses, working or material costs are also excluded to the extent that the expenses were increased by the object of the delivery being subsequently transported to another location than the place of business of the customer.

e) All warranty claims shall become statute-barred at the latest after 12 months following delivery. This provision shall not apply where longer periods are prescribed by law according to sec. 438 para. 1 No. 2 (buildings and items used for a building), sec. 479 (right of recourse) German Civil Code („BGB“), as well as in cases of loss of life, bodily injury or damage to health, or where the supplier intentionally or as a result of gross negligence fails to fulfill its obligation or fraudulently conceals a defect.

8. INDUSTRIAL PROPERTY RIGHTS AND COPYRIGHTS

a) Unless otherwise agreed, we are only obliged to supply the delivery items free of industrial property rights and third-party copyrights (referred to hereinafter as property rights) in the country of the customer. If a third party asserts a justified claim against the customer based on an infringement of an IPR with respect to the supplies made by us and used in conformity with the sales agreement, we shall be liable to the client within the time period for warranty stipulated in §8 of this general terms and conditions as follows:

aa) We may, at our option, either obtain - at our expense - a right of use which is sufficient for the agreed or expected use and grant the same to the customer, or transform the delivery items such that the industrial property right is not infringed, or replace the delivery items provided that the agreed or expected use of the delivery items by the customer is not thereby impaired. If this is not possible under reasonable conditions or reasonable time, the client may cancel the Agreement or reduce the remuneration pursuant to the applicable statutory provision.

bb) Our obligation to pay damages is governed by §8.

cc) Our obligations as stated above exist only insofar as the customer notifies us immediately in writing of any claims asserted by the third party and does not acknowledge an infringement and insofar as all defence measures and negotiations for a settlement remain open to us. If the customer stops using the supply for reasons of mitigation of damage or other important reasons, he shall be obligated to indicate to the third party that stopping the use is not connected with an admission of an infringement of an industrial property right.

b) Claims of the customer are excluded as far as the customer itself is responsible for the violation of proprietary rights or as far as it was caused by a use of the product unforeseeable for us or by the customer's modification to the product or use of the product together with products not supplied by us.

c) Further claims or claims different than those mentioned in this paragraph 8 of a client towards us and our servants for an infringement of an industrial property right are excluded.

9. LIABILITY

a) Claims to damages and reimbursement of expenditures of the client, regardless of the legal reason, are ruled out to the extent that we are not guilty of gross negligence and / or violation of fundamental contractual obligations. This does not apply to violations of life, body or health and the mandatory liability according to the product liability law. The damage claim for the violation of fundamental contractual obligations however is limited to the predictable, contract-usual damage.

b) The aforementioned exclusions and limitations of liability apply to the same extent in favour of the organs, legal representatives, employees and other agents of Talux.

10. FINAL PROVISIONS

a) The sole place of jurisdiction for all disputes arising from this agreement is our registered office if the contract partners are businessmen, legal entities under public law or special funds under public law or if the client has no general place of jurisdiction in the Federal Republic of Germany. We also reserve the right to sue the client on his general place of jurisdiction.

b) The contractual relationship shall be subject to German law; the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

c) If individual provisions of these general terms and conditions or parts thereof shall become ineffective, the validity of the remaining general terms and conditions shall be unaffected.