

# TERMS AND CONDITIONS OF SALE AND DELIVERY

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proMesh  
GmbH

## 1. Scope

- 1.1 These Terms and Conditions of Sale and Delivery apply solely to companies defined under section 14 of the German Civil Code.
- 1.2 We shall provide all of our deliveries and services exclusively under the application of these Terms and Conditions of Sale and Delivery. We shall not accept any conflicting, deviating or complementary terms of the customer, unless we explicitly consented to their applicability. Assembly, commissioning and customer service operations executed by us outside our plant with our staff shall be governed by our General Installation Conditions, which you can find on our website as well.
- 1.3 Our Terms and Conditions of Sale and Delivery shall also apply to future transactions even if they are not specifically referred to in each case.

## 2. Offer / Quotation and Completion of a Contract

- 2.1 Our offers are conditional and non-binding unless explicitly indicated as binding.
- 2.2 Decisive for the order is our order acknowledgment in text form. If the customer should have any objections to the terms of the order confirmation, these must be made known immediately. Otherwise, the contract will be carried out in accordance with the order acknowledgment.
- 2.3 The invoice or the delivery note is to be regarded as the order acknowledgment if the order is carried out immediately.
- 2.4 Samples, illustrations and details of weight, size and colour are to be regarded as approximate only, unless they are specifically designated as binding.

## 3. Prices

The prices in the order confirmation are binding. These prices are valid ex works and exclude packaging, freight, postage, insurance, customs duty, other expenses and value added tax.

## 4. Set-Off and Right of Retention

The customer may only set off a debt with an undisputed or final declaratory judgment. The customer will only be permitted to assert a right of retention if it is based upon the same conditions of contract.

## 5. Delivery

- 5.1 The lead times given by us are non-binding unless they are agreed upon as binding. The lead time will begin with the order acknowledgment, but not before the customer has provided the documents and technical details, authorization, clearance or a deposit (if agreed upon).
- 5.2 We are not responsible for delays in delivery and service due to Acts of God or any other unforeseeable, extraordinary circumstances through no fault of our own which make it difficult or impossible to deliver, even if time limits and delivery times are binding. We are permitted to postpone delivery or services for the period of the delay plus reasonable preparation time. If the delay lasts longer than three months, the customer is permitted to withdraw from the contract after setting an additional time-limit. Any claims for damages on the part of the customer in this case will not be accepted.
- 5.3 If delivery is delayed due to gross negligence, we will be liable for the resulting damages. In the case of ordinary negligence, liability for proven damages due to delay shall be limited to compensation for every completed week of the delay of up to 0.5%, but up to a maximum of 5% of the total price for the part of the shipment which could not be used for the purpose intended due to the delay.

## 6. Passing of risk / Shipping

- 6.1 The shipping and transport is at the customer's own cost and risk. The risk will pass to the customer as soon as the goods leave our factory. This applies even if we have agreed to pay freight charges in a specific case.
- 6.2 If transportation is delayed due to circumstances for which the customer is responsible, the risks shall be borne by the customer.
- 6.3 If we choose the mode of shipment, the route or the shipping company we will only be liable for gross negligence.

## 7. Notice of Defects

- 7.1 The customer must inspect the delivered goods as to their quantity and quality (damage to the packing) upon delivery. Complaints shall be made immediately in text form. A statement of the facts shall be obtained from the carrier.
- 7.2 The customer must inspect the goods immediately and notify us without delay in text form of any defects seen. Any defects not recognizable in such an inspection are to be notified without delay in text form after being detected. Otherwise the delivery shall be considered to have been approved.

## 8. Warranty Claims

- 8.1 In the event of a defect for which we are responsible, we shall be entitled to remedy this by either making repairs or supplying flawless items, at our own option. If we refuse to remedy such defects or if our efforts to do so fail or the customer cannot reasonably be expected to accept the result, the customer may assert its other legal rights. No claims will be accepted in the event of a minor reduction in value or suitability. The provisions of paragraph 9 shall apply to claims for damages due to defects.
- 8.2 All details of our ring meshes and accessories refer to their quality and composition and do not constitute guarantees. If we are asked to supply goods according to drawings, specifications, patterns, etc supplied by our customer or third parties, the customer shall assume the risk relating to the suitability and the guarantee for the intended purpose.

The user or further processor shall always be responsible for the proper use of items and for checking the possibilities of such use and ensuring that any protection to be afforded by the ring mesh products is actually provided. The further processor is asked to attach warnings to its product concerning its area of application and the protection to be afforded, etc.

We will not be responsible for any material defects caused by improper use, for incorrect assembly or installation by the customer or third parties, for normal wear and tear or for faulty maintenance or any effects or soiling due to such elements as gritting salt, bird droppings or exhaust emissions. Nor will we be responsible for the consequences of changes or maintenance inexpertly undertaken by the customer or third parties. The same applies to defects that only constitute an insignificant reduction in the value or suitability of the goods.

The decisive factor determining the state of the goods in accordance with the contract is the passing of risk. If an inspection of the goods or first article inspection has been agreed, no complaints concerning the goods that could have been established if they had been carefully examined as part of the inspection will be accepted once the acceptance protocol has been signed.

As far as resistance to corrosion is concerned, we would refer to the information leaflet no. 828 on the corrosion resistance of non-rusting steels in the atmosphere published by the body Informationsstelle Edelstahl

Rostfrei (German title: "Korrosionsbeständigkeit nicht rostender Stähle an der Atmosphäre") and to the wire manufacturer's own instructions.

In order to maintain the quality of the ring mesh, maintenance must be carried out in accordance with the information leaflet no. 965 on the cleaning and care of stainless steel in the building industry published by Informationsstelle Edelstahl Rostfrei (German title: "Reinigung und Pflege von Edelstahl Rostfrei im Bauwesen").

- 8.3 Any claims for defects of the customer, including damages claims, that are based on a defect shall come under the statute of limitations 12 months from the statutory limitation period. The statutory limitation periods shall apply, however, to
  - any item that was used in line with its customary manner of use for a building structure and caused its defectiveness;
  - any recourse by the entrepreneur if the last contract in the supply chain is a consumer goods purchase;
  - any fraudulent concealment of a defect by us;
  - any acceptance of a guarantee by us;
  - any wilful or grossly negligent breach of duty by us;
  - any injury to life, limb or health;
  - any claims under the German Product Liability Act.
- 8.4 For the customer, the seller's recourse to us under section 445a of the German Civil Code shall be possible if the last contract in the supply chain is a consumer goods purchase. If the last contract in the supply chain is a contract with an entrepreneur as well, we shall be liable towards the customer for recourses by the seller only if we are at fault.

## 9. Limitation of liability / Compensation

- 9.1 We shall be liable for intentional and gross negligence but shall only be liable for simple negligence in the case of a breach of important contractual obligations to do with the nature of the contract or if such a breach jeopardizes the ability to achieve the purpose of the contract. No other claims based on simple negligence, regardless of the legal reason for making them, will be accepted.
- 9.2 The above-mentioned limitation of liability does not apply to claims under the German Product Liability Act or to claims arising out of death, physical injury or damage to health. The limitation of liability shall also not apply if we deliberately fail to mention defects or have assumed a guarantee.

## 10. Retention of title

- 10.1 We reserve the title to all goods delivered by us until all payments from previous contracts have been paid. Claims for payment include checks, bills of exchange and claims in connection with the invoice due. If claims for payment are to be met by a bill of exchange the retention of title shall not be discharged until all demands in connection with the bill of exchange have been met.
- 10.2 If the customer defaults payment or if it is obvious that our claims to payment are jeopardised because of the customer's inability to pay, we shall be permitted to demand the immediate return of the goods even without setting a deadline in accordance with section 321 of the German Civil Code.
- 10.3 The customer shall inform us without delay in the event of a seizure on execution or any other measure taken by third parties. The customer shall bear all expenses in connection with discharging the seizure and recovering the goods delivered if they have not already been confiscated by the third party.
- 10.4 Subject to revocation for an important reason, the customer shall be permitted to do with the goods delivered as it sees fit in the due course of business. The assignment of the goods as a means of security and a seizure on execution are not permitted. Goods subject to retention of title may only be passed on to the buyer if the customer is not in default on its obligations to us.

In the event of goods being resold, the customer automatically assigns to us all claims arising from the resale, especially claims to payment or other claims connected with the sale, to the extent of the final amount of our invoice (including VAT). This applies regardless of whether the goods delivered have been resold without or after being further processed.

Until we revoke permission for an important reason, the customer may collect and hold in trust the debts assigned. The resale of the right to collect the debts in the sense of genuine factoring is subject to our prior approval. For important reasons, we shall be entitled to make the assignment of the debt also known to garnishees on the customer's behalf. When the garnishee has been informed of the debt also known to garnishees on the customer's permission to collect the debt is cancelled. In the event of the revocation of that permission, we can demand that the customer inform us of the debts assigned and of the debtors' names, let us have all details required for the collection of the amounts involved, hand the necessary documents to us and inform the debtors of the assignment.

Important reasons within the meaning of these provisions are: payment default, suspension of payments, the opening of insolvency proceedings, the protest of a bill of exchange or clear evidence of excessive indebtedness or impending insolvency on the customer's part.

- 10.5 Treatment and processing by the customer of the goods delivered is always done on our behalf. We are considered as manufacturers without further obligations within the meaning of section 950 of the Civil Code. If the item delivered is processed with other materials that do not belong to us, we thereby acquire the joint ownership of the new item, the proportion being the invoice value to the purchase price of the other goods processed. Moreover, the same provisions apply to the item resulting from the processing as to the goods delivered.
- 10.6 If the delivery object is inseparably combined, mixed or blended with movable items not owned by us, we shall acquire co-ownership of the new item at the ratio between the value of the delivery object (final invoice amount including VAT) and the other combined, mixed or blended items at the time of combination, mixing or blending. If the delivery object is combined, mixed or blended in such a way that the customer's item is to be considered the main item, the customer and we are already in agreement now that the customer shall transfer co-ownership of this item to us on a pro rata basis. If the delivery object is combined, mixed or blended with movable items of a third party in such a way that the third party's item is to be considered the main item, the customer shall already now assign to us the remuneration claim due to the customer towards the third party in the amount corresponding to the invoice amount accounting for the delivery object. The new item created by combination, mixing or blending or the (co-)ownership rights to the new item due or to be transferred to us as well as the remuneration claims assigned to us shall equally serve to secure both our receivables and the delivery object itself.

## 11. Place of performance, jurisdiction and applicable law

- 11.1 The place of performance for both deliveries and payments shall be Mühlacker.
- 11.2 All legal issues arising from a contract or relating to its drafting and validity shall be settled by the court that has jurisdiction for our company's place of business. This applies to business persons of both parties. At our own option, we may also bring a legal action at the customer's place of business.
- 11.3 The contractual relationship is subject solely to German law. In the case of business dealings with customers that have their head office abroad, the UN Convention on Contracts for the International Sale of Goods (CISG) shall apply.