

Terms and Conditions

Amendment of § 13b of the Value Added Tax Act (UStG)

1. Link to the PDF
2. Current information on § 13b UStG

Terms and Conditions of Sale, Delivery and Payment

I. Binding status of the terms and conditions and the contract:

1. All business relations between Südmetall Beschläge GmbH and the purchasers, which are commercial operators within the meaning of the German Commercial Code (HGB), legal entities under public law or special funds under public law, shall be governed exclusively by our terms and conditions set forth below in their respective valid versions. Any other terms and conditions with contrary effect in confirmations or other correspondence etc. shall be waived, even if they are not expressly contradicted by us. Any terms with contrary effect shall only be legally binding if they are confirmed by us in writing.
2. Supplies outside Germany and Austria shall be governed by terms and conditions agreed upon on a case-by-case basis. For export deliveries the conditions are stipulated individually. Pour des livraisons d'exportations les conditions individuellement accordées sont valables.

II. Offer and conclusion of contract

1. The order shall only be considered accepted when it has been confirmed by us in writing; until then our offer shall be considered as non-binding and subject to confirmation. Additions, amendments or subsidiary agreements for the purpose of executing the contract - whether agreed by telegram, telephone or verbally - also require our written confirmation to be effective. Offers shall be given free of charge and shall remain valid and free for a reasonable period of time and when accepting the indicated quantities.
2. We shall retain all copyrights and property rights to the transferred documents, drawings etc., and such items must not be made accessible to third parties without our express consent.
3. Representatives are authorised to receive orders, but not to confirm them.

III. Scope of delivery obligations and delivery times

1. Our written order confirmation shall be decisive in establishing the scope of the delivery. We reserve the right to make changes to colour and structure that are conventional for the industry and reasonable for the buyer.
2. The purchaser alone shall be responsible for the implementation guidelines issued by it and shall indemnify us from any adverse consequences and any breaches of copyrights and other property rights, unless we have acted with intent or gross negligence. Our liability for ordinary negligence is limited to the following clauses. We are not obligated to verify whether the purchaser's implementation guidelines breach copyrights or other property rights.
3. Delivery times shall be adhered to where possible, but are always non-binding unless we have expressly indicated that they are binding in writing. We are authorised to make partial deliveries if this is conventional for the industry and reasonable.
4. The adherence to binding delivery times is subject to the condition that all the agreed documents to be delivered by the purchaser are received on time as agreed, and that the agreed terms of payment and other obligations on the part of the purchaser are adhered to. If these conditions are not fulfilled on time, the delivery times shall be extended by the length of the delay. This shall not apply if the contractor was responsible for the delay.
5. If we default on delivery, in the event of loss the purchaser may - to the exclusion of additional compensation claims - request compensation of 0.5% of the delivery value for each completed week of the delay, up to a maximum of 5% of the delivery value, if the material obligations under the contract are breached by us as a result of ordinary negligence. Otherwise we shall not be liable for ordinary negligence unless we have acted with intent or gross negligence. In this case we shall be obligated to fully compensate the loss.

6. All compensation claims from the purchaser due to a delivery delay or in lieu of performance in excess of the aforementioned and following boundaries, are excluded. This shall not apply if we have acted with intent or gross negligence. The purchaser may only withdraw from the contract in accordance with statutory provisions if the delay was caused by us. The statutory withdrawal right of the purchaser shall remain unaffected by this. There shall be no changes to the burden of proof to the detriment of the purchaser. The purchaser is also obligated to declare, after setting a reasonable deadline, whether it is withdrawing from the contract due to a delay in delivery and/or requests compensation in lieu of performance or insists on fulfilment.
7. If we default on delivery due to force majeure e.g. war, mobilisation, insurrection or similar events, e.g. strikes, lockouts or official prohibitions, the agreed delivery time shall be extended by the length of the delay without us being obliged to pay damages, except where we are responsible for such losses. Should this delay render adherence to the contract unreasonable, both parties shall be authorised to withdraw.
8. Release orders must be placed at the latest 12 months from the date of the order confirmations. After expiration of this period, we shall be authorised to send the goods to the buyer and invoice it for said goods, or to invoice the buyer for the materials stored by us along with surcharges for costs and profit. If the purchaser fails to take the goods within the applicable time limit, we may demand performance and compensation due to delayed performance. In this case we must also set a reasonable deadline, with the threat that we may withdraw from the contract after expiration of the deadline and that we may also request compensation.

IV. Order changes

1. Deviations and alterations in the execution of the order are permitted if they are necessary for technical reasons and are reasonable for the purchaser.
2. Alterations made to orders prior to or after receipt of the order confirmation shall only be considered if any additional costs are borne by the purchaser and if a sufficient extension of the delivery time is agreed.

V. Transfer of risk, shipping and packaging

1. The determination of the shipping method is at our discretion unless agreed otherwise. Shipping shall take place at the cost and risk of the purchaser even if our own vehicles are used, which shall be possible in accordance with our reasonable judgement and without any requirement to use the cheapest and most secure shipping method. Risk shall transfer to the purchaser at the latest upon shipment of the goods or their selection and preparation.
2. Additional costs for express or urgent shipments which are requested by the purchaser must be borne by it, along with the packaging costs for all orders.

We refer to the packaging law §15 VerpackG. We are happy to support you!

VI. Returns

1. All returns must be properly packaged and sent "ex works", whereby the transport risk remains with the sender until the goods fall under our control. They require our express consent.
2. Goods that are cut to size, separate orders and custom-made products shall not be taken back unless we give permission in recognition of a defect.
3. If we are not at fault for the reason for the return, we shall be entitled to reduce the credit as compensation by a flat rate amount of 15-25% depending on the nature and scope of the returned goods and depending on the damages resulting to us in the course of events. We reserve the right to assert further compensation claims.

The purchaser shall have a right to prove that no or only lower damages occurred.

VII. Prices

1. The respective price lists shall apply for all deliveries and services. The prices shall apply net and ex works or ex warehouse, excluding packaging costs of at least €7.90 per delivery, plus freight charges and VAT. Deliveries shall be made carriage paid in the event that the net invoice value exceeds €175.
2. Deliveries by forwarding agents: For pipe-shaped products (2 - 6 metres, bunches up to a weight of approx. 80 kg) a flat rate of €40 shall be charged per bunch. Deliveries shall be made carriage paid in the event that the net invoice value exceeds €1.000.
3. If according to the contract delivery is to occur more than four months after the conclusion of the contract, we shall be entitled invoice the purchaser for an increase of the list prices between the conclusion of the contract and the delivery. The purchaser shall, however, have the right to withdraw if the price increase exceeds the increase in the "cost of living index for all private households in Germany" (published by the Federal Statistics Office) in a manner that is not insignificant in the period between the order and the delivery.
4. If we cannot deliver due to operational disruptions or a shortage of material sourced by us for which we are not at fault, we shall be entitled to withdraw, but must immediately inform the purchaser of the non-availability of the delivery and reimburse any the consideration paid immediately.
5. If rebates or discounts are granted in individual cases, there shall be no legal claim to these in other cases. This shall also apply for special and bulk discounts and special prices.

VIII. Liability for material defects and obligation to return

1. The purchaser must immediately report any visible and non-visible material defects and deviations to us in writing insofar as the provisions of §§ 377, 378 HGB apply, upon condition that the purchaser immediately inspect the goods upon delivery and immediately complain in writing providing an exact description of all defects, whereby we must receive the complaint at the latest 2 weeks following the delivery. Hidden defects must be reported within these deadlines, calculated from the day of discovery. If the purchaser does not immediately provide any samples of the disputed goods on request, it shall lose its warranty rights in this respect.
2. In the event of legitimate defects, purchased items shall be either repaired free of charge or redelivered at the discretion of the purchaser and subject to the following conditions, if a material defect was present at the time of the transfer of risk and within the limitation period. For material defects involving a service contract, this shall take place at our discretion.
3. Claims relating to material defects shall fall time barred within one year. This shall not apply if the law stipulates longer periods in §§ 438, (1) No. 2 (buildings and items used for buildings), in 479 (1) (recourse claims) and § 634 a (1) No. 2 (construction defects) of the German Civil Code (BGB).
4. First, we always have the right to subsequent performance (= repair or subsequent delivery) if this does not require disproportionate expenditure. Otherwise, including if the subsequent performance fails, the purchaser may withdraw from the contract or request a discount, irrespective of any compensation claims.
5. No defects claims may be brought in the event of entirely insignificant defects, deviations in quality and usability impairments.
6. Claims made by the purchaser related to the costs required for subsequent performance, in particular transport, labour and material costs, shall be excluded, if said costs increase because the object of delivery is subsequently transferred to a location other than a subsidiary of the purchaser, unless said transfer corresponds to its proper use.
7. Recourse claims from the purchaser shall only exist against us if they exist between the purchaser and its customers as part of the statutory defect claims.
8. Otherwise Clause X shall apply for compensation claims of the purchaser (Other compensation claims). All additional existing claims or claims other than those under Clause VII from the purchaser due to material defects against us, our statutory representatives and employees or vicarious agents are excluded.
9. We may retain payments from the purchaser in the event of legitimate defect complaints to an extent that is reasonably proportionate to the defects. The purchaser may only retain payments in the same proportion for defects recognised by us or if these are undisputed, have been established with legal effect or are ready for decision. If an objection concerning a defect is made by the purchaser without due cause, we shall be authorised to request compensation for the expenses resulting for us.

IX. Impossibility and contractual adjustments

1. If delivery is impossible, the purchaser may request compensation if we are responsible for the impossibility. However, the purchaser's claims for damages shall be limited to 10% of the value of the respective part of the delivery that cannot be appropriately used or sold due to said impossibility of performance. This shall not apply, however, if we are liable due to intent or gross negligence. The right of the purchaser to withdraw from the contract shall remain unaffected and such action shall not entail any change to the burden of proof to the detriment of the purchaser.
2. If the impossibility is temporary, Clauses III.5 and 6 shall be applied accordingly.
3. If unforeseeable events such as those under Clause III.7 significantly impact on our operation or the value or content of the delivery, the contract shall be adjusted appropriately if this is reasonable. Otherwise, both parties shall be entitled to withdraw. Notice to this effect must be given immediately following discovery of the extent of the event, even if an extension of the delivery time had already been agreed to.

X. Other compensation claims

1. Additional claims for compensation or the reimbursement of expenses from the purchaser, regardless of the legal grounds, but in particular due to breaches of duty from the contract or unlawful acts, are excluded unless they are permitted below.
2. Compensation shall be paid if there is mandatory liability, such as in the case of intent, gross negligence due to loss of life, personal injury or damage to health, according to the Product Liability Act or due to a breach of material contractual obligations. The latter is, however, limited to damages that are typically foreseeable in relation to the contract except in situations involving intent or gross negligent or liability due to loss of life, personal injury or damage to health. This shall not be associated with any change to the burden of proof to the detriment of the purchaser.
3. If the purchaser is entitled to bring compensation claims, these shall expire following the aforementioned time barring period for the defect claims indicated therein.

XI. Legal defects, industrial property rights and copyrights

1. We are only obligated to perform the delivery free from the aforementioned property rights in the delivery country. If third parties assert justified claims against the purchaser due to a breach of the aforementioned property rights on the basis of deliveries to the purchaser performed by us and used according to the contract, we shall be liable with respect to the purchaser as part of the aforementioned conditions as follows:
 1. At our discretion and cost, a right of use shall either be obtained for the delivery or altered in such a way that property rights are not breached, or alternatively subsequent delivery shall take place. If this is not possible or reasonable for us, the purchaser shall be entitled to the statutory withdrawal or reduction rights. Obligations regarding the payment of compensation shall be governed by the following clauses
 2. The above shall only apply if and to the extent to which the purchaser immediately informs us in writing of the claims asserted by third parties, if it does not recognise a breach itself and if all counter measures, such as settlement negotiations, are reserved. If the purchaser stops using the delivery in order to mitigate damage or for other important reasons, it must notify the third party that this does not constitute a recognition of an infringement. Otherwise, Clause III.2 shall apply.
2. Any further claims from the purchaser due to a legal defect, including against our legal representatives, vicarious agents and employees, are excluded.

XII. Payment terms

1. Our invoices are payable within 14 days of receipt of the invoice with a 2% discount, or net within 30 days of receipt of the invoice and without any discount. Invoices shall be rebuttably presumed to have been received within 3 days of the invoice date.
2. In the case of unknown buyers or doubts regarding creditworthiness, we shall be authorised to deliver on the basis of advance payment or cash on delivery.

3. Bills of exchange and cheques shall only be accepted as payment upon condition that they are honoured upon cashing; the costs of discounting and collection shall be borne by the purchaser.
4. If the purchaser defaults on payment, we shall be entitled to charge default interest at 8% above the respective base rate according to § 1 of the German Discount Transfer Law. If the purchaser defaults on the payment of an invoice, we shall be entitled to claim immediate payment also of other invoices.

XIII. Compensation and retention

Offsetting with payments or the retention of these against any counterclaims from the purchaser is excluded unless the counterclaims are recognised, undisputed, have been established with legal effect or are ready for decision.

XIV. Retention of title

1. For all our deliveries, we shall retain title over the goods delivered until payment in full of the purchase price and all accessory claims, in particular until all bills of exchange and cheques have been cleared.
2. The purchaser is authorised to re-sell or process the goods in the ordinary course of business, whereby the processing or remodelling shall in all cases be carried out on our behalf and we shall acquire co-ownership of the new item which is processed with other items, or in the event of indivisible combining or mixing, in proportion to the value of the object delivered to the other processed items at the time of the processing.
3. Any re-sale of the unprocessed or the processed goods, or goods which that been bound or mixed with another item, may only be undertaken by the purchaser subject to retention of title. The customer of our purchaser must also be obligated by it to re-sell the item on our behalf under retention of title. Our purchaser must provide us with the name and address of its own customer in the event of a re-sale.
4. The claim to the purchase price of the purchaser against its customer for the goods delivered by us is hereby assigned to us as security in the amount of our open claims. The purchaser shall retain its authority to collect the claim even after assignment. Our authority to collect the claim shall remain unaffected. We undertake, however, only to collect the claim ourselves if the purchaser does not comply with its payment obligations from the proceeds collected, if it defaults on payment or if insolvency proceedings etc. are instituted concerning its assets or if the buyer ceases payment. Should this occur, the purchaser must inform us of the assigned claims and the debtors and provide all the necessary information to collect the claim along with the associated documents; it must also inform the debtor of the assignment.
5. The retention of title shall remain valid until payment in full of all liabilities pertaining to the business relationship and shall extend to the recognised balance if we include the claims against the purchaser in a current account. (Current account reservation)
6. If the buyer defaults on payment or breaches the aforementioned retention of title obligations, we may demand the surrender of the goods delivered without thereby withdrawing from the contract.
7. The buyer is not authorised to pledge the delivery object to third parties or to assign it by way of security before fulfilling all payment obligations with respect to us. In the event of seizure by third parties, we must be immediately informed of this and the exact name and address of the third party must be disclosed to us.
8. If the value of the existing retention of title or the existing securities exceeds our outstanding claims by more than 20%, we are prepared to release such securities at the discretion and request of the purchaser.
9. As soon as the purchaser falls into financial difficulty, if it is called upon by court to make a declaration in lieu of an oath or if insolvency proceedings etc. are instituted against it, we may request security for our payment or we may insist on an execution of the contract against simultaneous payment. If, notwithstanding a request to that effect, the purchaser is not prepared to do this, we shall be authorised to withdraw from the contract and the purchaser must release the goods delivered by us at the location of storage, where necessary following legal authorisation by the (temporary) insolvency manager and according to the value of our outstanding claims. In addition, we shall be authorised to charge the costs of the redemption and recovery against the purchaser at a flat rate; this shall be 25% of the purchase price if no

proof is furnished. Any proof that is furnished may result in increased or reduced costs as proven by the purchaser.

XV. Tolerances, samples, custom-made products, printing errors, design protection and patents

1. Discrepancies in terms of sizes, colour, content, weight etc. as a result of production are permitted within the tolerances conventional for the industry as well as according to the provisions of the Dimensions and Weight Act.
2. Samples used as a basis for delivery shall be considered an approximate basis for this delivery and do not constitute a promise of sample properties unless an express assurance is made. We shall not pay any compensation for samples and templates etc. sent to us in the event of loss, damage or breakage.
3. The buyer agrees to technical changes to our products, which are continually adjusted in line with the state of the art and usability, if these are reasonable for it.
4. In the case of custom-made products according to the buyer's instructions, drawings or designs, it shall bear the sole responsibility for the correct constructional configuration, the practical suitability of the parts delivered and the correctness with respect to patent, utility model and design law, even if it has been advised by us during development. We shall not be liable for any consequences arising in this respect. The buyer is obligated to indemnify us from all third party claims. Tools, equipment, moulds, templates, models etc. which are produced by us for the manufacture of custom-made products shall always remain our property and shall not be released even if the buyer has paid a share of the costs. These tools and moulds shall be used exclusively for deliveries to the buyer of the custom-made product.
5. Information, data and technical advice regarding application and processing possibilities for our products is not binding and take place to the exclusion of any liability unless an assurance was provided by us or in situations involving intent or gross negligence. The provisions under

Clause X. (Other compensation claims) shall apply accordingly.

6. Imitations, including material distortions, of our products which are legally protected shall be prosecuted.
7. All dimensions data and illustrations in catalogues are not binding and require our written confirmation. We accept no responsibility for printing errors in catalogues and price lists.

XVI. Place of fulfilment, place of jurisdiction and choice of law

1. The registered office of the company is the place of fulfilment for all contractual claims, which are subject solely to German law.
2. For all disputes resulting from the contractual relationship, including claims involving bills of exchange and cheques, the place of jurisdiction is the registered office of our company. We shall be entitled, however, to take legal action at the registered office of the client, as well as any additional place of jurisdiction.
3. If the client does not have a domestic place of jurisdiction, if it moves its domicile or place of habitual residence outside of the Federal Republic of Germany following the conclusion of the contract or if this is unknown to us, the competent court for our registered office shall be agreed.

XVII. Final provisions

1. If the provisions of the above conditions or the contract concluded are or become wholly or partially invalid, this shall not affect the validity of the remaining provisions. In this case the contracting parties shall be obligated to implement a legally valid replacement agreement which best approximates what the parties had intended or would have intended according to the aim and purpose of the contract had they considered this point.
2. Any deviation from these conditions, catalogues, price lists, offers and other declarations of intent, in particular subsidiary agreements, shall only be valid if they are confirmed by us in writing.

