

General Terms and Conditions of Sale of Paul Jost GmbH

Status: February 2017

A. General

1. Our Terms and Conditions of Sale apply exclusively to all current and future business relationships. We shall not recognise any terms and conditions of the customer which are contrary to or different from our Terms and Conditions of Sale unless we have explicitly agreed to their applicability in writing. Our Terms and Conditions of Sale shall apply even if we supply to the customer without reservation in the knowledge of the terms and conditions of the customer which are contrary to or different from our Terms and Conditions of Sale.
2. All agreements made between us and the customer to execute this contract, i.e. which do not concern the conclusion of contract as such, must be set out in writing. For its part, any contracting-out of this written form requirement shall be required in writing. The written form is equivalent to transmission by fax or e-mail.
3. Our Terms and Conditions of Sale shall only apply to companies pursuant to Section 310 (1) German Civil Code (BGB).
4. "Scrap" refers in the following to scrap and other materials.

B. Offers – conclusion of contract

1. Our offers are non-binding and shall only become binding on us once we have confirmed them in writing or the subject matter of contract has been executed.
2. An order by the customer shall be viewed to be a binding offer to contract, which we may accept within 10 working days of receipt unless the order states otherwise.
3. The acceptance shall be declared either by way of confirmation of order or by delivery of the ordered goods to the customer. If the contract comes about we are obliged to deliver the scrap described in more detail in the offer in accordance with the following terms and conditions.
4. Agreed delivery quantities shall be understood as gross quantities. The gross quantity is the agreed quantity of metal plus and any extraneous materials contained therein.

C. Terms and conditions of delivery – condition

1. We shall determine the weight, quantity and condition of the goods at the place of performance of our service. The proof of weight shall be provided by presentation of the weighing slip. The customer shall recognise the details contained in the respective documents as correct unless he is able to prove the incorrectness of the details. With respect to composition, quality and metal yield, the qualities we have stated in our confirmation of order shall be viewed to have been agreed. We only owe a delivery in the condition declared in our confirmation of order. We shall not warrant a specific metal yield.
2. Any initialling of the freight and/or delivery papers by us may not be construed as a confirmation of the agreed quantity, quality, type of delivery or other contractual content.
3. We are entitled to exceed or undercut the delivered quantity if, in the case of a roughly agreed quantity, the deviation is up to 3 % insofar as the buyer can be reasonably expected to accept such and no other agreement has been made. Other deviations are admissible in accordance with DIN or applicable practice.
4. Part deliveries and premature deliveries shall be admissible insofar as the buyer can be reasonably expected to accept such.
5. The customer and people used by the customer for performance shall be on our business premises at their own risk. They must observe the applicable safety regulations and precautions when they enter our business premises and must follow the work rules and the instructions of our employees.

D. Delivery period

1. Delivery periods are only binding if they have been explicitly agreed. Agreed delivery periods shall apply in particular subject to us being delivered with goods on time, to adequate official approval and to force majeure.
2. Agreed delivery periods shall start on receipt of our declaration of acceptance by the customer. The delivery period shall be viewed to have been observed if we have provided the goods ready for forwarding and the readiness for forwarding has been communicated. If the goods are to be forwarded to a different destination at the request of the customer, the date of forwarding shall be decisive to meet the deadline.
3. If the customer defaults on acceptance or if the customer culpably infringes his other duties to cooperate, in particular the sending of the requisite substantiating documents, we may request the replacement of any damage arising, including any additional expenditure in this respect. In particular, after fruitless expiry of an appropriate period, we are entitled

to request damages instead of performance or to withdraw from the contract. If we request damages, the customer shall be entitled to prove that he was not responsible for the infringement of duty. We shall reserve the right to make further claims and to raise the plea of failure to satisfy the contract.

4. The delivery period shall be extended accordingly in the case of force majeure, labour disputes and other delays and impediments for which we are not responsible. Force majeure shall be understood to be in particular strike, lock-out, operational disturbances which we did not cause, such as mechanical plant standstill, traffic obstacles, weather influences and sovereign measures. A case of force majeure shall also be viewed to exist if the above mentioned circumstances occur with one of our suppliers or sub-suppliers. We shall notify the customer of the start and the end of the delivery impediment in writing immediately. If the delivery impediment lasts longer than 8 weeks, both contracting parties are entitled to withdraw from the contract after fruitless expiry of an appropriate period of grace with respect to that part of the contract which has not yet been satisfied.

E. Transfer of risk

1. We shall make deliveries “ex works” (Incoterms 2010) unless otherwise agreed.
2. The goods shall be sent to a different destination at the request, cost and risk of the customer. We shall choose the mode of transport and the forwarder unless otherwise explicitly agreed. At the express wish of the customer we shall take out suitable transport insurance at the cost of the customer.
3. The risk of incidental loss shall pass to the customer, forwarder or any other of the customer’s agents on handing over the goods. If the customer defaults on acceptance, this shall be the equivalent of a hand-over. If the goods are stored with us or a third party due to a belated acceptance on the part of the customer, particularly if the customer delays the loading and transportation of the goods, the customer shall bear the costs and risk of such. This shall have no effect on the agreed payment periods.
4. If there is default on acceptance, any duty to provide advance performance which may have been agreed with us shall come to an end. Instead the buyer shall be obliged to pay the purchase price in advance.
5. If the customer or his agent collects the goods “ex works”, he must ensure that the statutory provisions and any official orders with respect to the transportation of the scrap are observed.

F. Prices – terms and conditions of payment - offset – retention

1. The prices stated are net prices plus freight costs, in particular for transport, custom duties and insurance and the statutory value-added tax. Unless otherwise agreed, our invoices shall fall due for payment immediately on receipt and without any deduction.
2. The contractually agreed prices are based on the freight rates applicable on the date of the agreement. The occurrence or increase in public charges shall cause the price to be increased. If free delivery has been agreed, the agreed price shall apply only in the case of unimpeded usual transport possibilities and subject to an increase in the freight rate.
3. If third-party delivery and no fixed delivery price have been agreed, we are entitled to determine the prices in accordance with the applicable price list unless the customer is not aware of it. This shall apply in particular to deliveries "ex works".
4. Cheques shall first be viewed as payment once they have been finally redeemed and we may dispose of the amount. All charges shall be borne by the customer. Bills of exchange shall be recognised only on express agreement. Charges shall be borne by the customer.
5. We may first credit any payments made by the customer against existing debts. If costs or interest have already arisen, we are entitled to first credit against the costs and then the interest and finally against the main performance.
6. If a payment deadline has been agreed, the delivery date shall be the key date for this payment deadline and also for the calculation of any interest. With respect to payment, every order shall be viewed as a transaction in itself.
7. If the customer does not pay for an agreed part delivery on time, we are entitled to refuse any further deliveries until the outstanding amount has been settled.
8. In the event of default on payment, we are entitled to request default interest of 9 percentage points above the base interest rate. We reserve the right to prove higher damage; the same shall apply to proof of less damage by the customer. Furthermore, in the case of default on payment, we are entitled to demand immediate payment for all other contracts for which deliveries have been made irrespective of any payment deadlines and deferments which may have been granted. We are similarly entitled to request appropriate security. We are entitled to refuse performance if our claim to counter-performance is endangered due to a lack of solvency on the part of the customer, particularly if his payment can no longer be covered by credit insurance or if the customer has defaulted on a due payment.
9. The customer shall be entitled to offset only with undisputed and final receivables which we have recognised. He shall only have rights of

retention to the extent that they are based on the same contractual relationship. Any claim directed against us can only be assigned in whole or in part after having obtained our prior written approval. We are entitled to offset with and against due receivables and receivables which are not due irrespective of the legal reason.

G. Reservation of ownership

1. All delivered goods shall continue to be our property until satisfaction of all receivables irrespective of the legal reason. This shall also apply with respect to any receivables arising in future or conditional receivables.
2. The customer is obliged to store the reserved goods separately and to insure them in the usual and appropriate way. The customer shall here and now assign any claims against the insurance company to us.
3. The customer is entitled to process the goods merely during the ordinary course of business. Reserved goods shall be processed on our behalf such that we acquire ownership to the new object. We are viewed to be manufacturer with respect to the processing or other conversion of the reserved goods by the customer without us being obligated by this under civil or public law, e.g. as waste producer. The customer shall keep the goods for us in this respect. If the reserved goods are combined, blended or processed with goods of the customer or goods of third parties, we shall acquire co-ownership to the new object at least in the relationship of the goods delivered by us to the value of the other goods. The goods shall be viewed as our reserved goods. In this case too, the customer shall keep the goods on our behalf.
4. The customer is only entitled to resell the reserved goods under reservation of ownership if the receivables resulting from the resale are passed on to us. If the customer sells the goods in an unblended or unprocessed form, he shall here and now fully assign the receivables to us and otherwise in the amount set out in G. No. 3, Sentence 4 by way of security. This shall apply irrespective of the number of customers.
5. The customer may not pledge the reserved goods, assign them by way of security or encumber them with any other third party rights. If the reserved goods are nevertheless encumbered, the customer is obliged to notify us immediately. Insofar as the third party cannot reimburse the costs of the intervention, the customer shall be liable to us in this respect.
6. The customer is entitled to collect the receivables during the ordinary course of business for as long as and to the extent that he satisfies his contractual duties towards us. Our authority to make the collection ourselves shall not be affected by this. However, we undertake to refrain from collection for as long as the customer correctly satisfies his payment

obligations towards us, no insolvency proceedings have been instigated and there are no indications of excessive indebtedness or impending insolvency of the customer.

7. If the customer satisfies all liabilities existing from the business relationship towards us, we undertake to waive the rights deriving from the extended and prolonged reservation of ownership. We furthermore undertake to release the securities to which we are entitled as we so choose insofar as the realisable values exceeds the receivable to be secured by 20 %.
8. We are entitled to revoke the authority to resell and to collect if the customer defaults on payment, discontinues payments or if his financial circumstances worsen considerably.
9. If the reserved goods are finally taken back by us, we are entitled to make a flat deduction of 25% when issuing a credit note without any further proof being required. The right to further damages shall be reserved as shall the proof of less damage by the customer.

H. Claims based on defects - liability

1. The purity of the scrap in terms of quality and material is restricted to the existing possibilities of careful material sorting usual in the trade according to appearance and origin.
2. With respect to the contractual condition of the goods, the time of handing over to the customer, to a person authorised by him or to the forwarding or freight carrier if otherwise agreed or at the latest the time of leaving the works shall be decisive.
3. To assert defects the customer must duly satisfy his duties to examine and complain set out in Section 377 German Commercial Code (HGB). If the customer or any person authorised by him accepts the goods without reservation, any later complaint due to the external condition of the delivery – also with respect to differences in weight – shall be ruled out. Any other defects, which were not recognisable to the customer even after careful examination, must be communicated to us immediately. Otherwise, the goods shall be viewed to have been approved without defect. This shall apply even if the customer does not immediately permit us to duly examine the defect at our request. The customer must take sufficient back-up samples for the examination of any defects.
4. If the customer duly complains of the defect on time, we are entitled to rectify within an appropriate period of grace or to reduce the agreed purchase price as we so choose if the defect complained of reduces the value or suitability of the goods for use not only negligibly. If the rectification also fails, the customer can request a reduction in the

purchase price or withdraw from the contract as he so chooses. Partial defects may not lead to an objection to the entire delivery unless the customer cannot reasonably be expected to accept this.

5. Specific minimum yields or suitability for the customer's purposes are not guaranteed.
6. We shall only be liable for wilful intent and gross negligence in accordance with the law. We shall be liable in the same way for our statutory representatives and vicarious agents. We shall furthermore be liable for the culpable infringement of main contractual duties. Unless the contract has been infringed by wilful intent or gross negligence, liability shall be restricted to foreseeable, typical damage. Liability shall otherwise be ruled out. Liability due to the culpable injury to life, body or health shall not be affected; this shall also apply to compelling liability under the Product Liability Act.
7. The limitation period for claims of the customer shall be 12 months as from passing of risk; the statutory periods shall apply to deliberate or deceitful behaviour and to claims based on the Product Liability Act. Subsequent performance does not start the limitation period anew.

I. Miscellaneous

1. If the goods are collected and transported by a customer who is domiciled outside the territory of the Federal Republic of Germany or collected and transported by his agent, or if the goods are sent by him to outside of the territory of the Federal Republic of Germany, the customer is obliged to provide us with the export certificate necessary for tax purposes. If this certificate is not provided, the customer must pay the domestic turnover tax rate applicable to the invoice amount.
2. If the goods collected from us by our customer are sent or transported abroad across the border, the customer must comply with the applicable legal provisions, e.g. notification and information duties of the EC Waste Shipments Regulation; any responsibility and liability on our part is ruled out here.
3. The customer undertakes to correctly dispose of the packaging at his own expense, unless otherwise agreed.
4. We are entitled to suitably store data of our business partners, in particular also bank details and tax numbers and to use them for our own purposes whilst observing the provisions of the Federal Data Protection Act. We are not entitled to pass these data on to third parties.

J. Place of jurisdiction – place of performance – severability clause

1. Exclusive place of jurisdiction is the court responsible for our Mülheim branch. However, we are entitled to also bring action against the customer at his registered office.
2. The law of the Federal Republic of Germany shall apply exclusively; the application of the Convention on the International Sale of Goods (CISG) shall be ruled out.
3. Unless otherwise stated in the order, our registered office is the place of jurisdiction.
4. The inefficacy of individual provisions of this contract or parts thereof shall not affect the efficacy of the remaining provisions. The parties are obliged on the basis of that which can be reasonably expected in good faith to replace an ineffective provision by an effective provision that is equivalent to it in terms of financial success insofar as no main change in the contractual content is brought about; the same shall apply if a circumstance requiring regulation has not been explicitly regulated.