



Terms and Conditions, status: August 2011

§ 1 Scope of application

The following terms and conditions shall apply exclusively and only to companies within the meaning of § 310 paragraph 1 BGB. Opposing or deviating from our terms and conditions by the customer we recognize only if we expressly agree in writing to the validity.

§ 2 Offer and contract conclusion

In case customer's order qualifies for an offer to purchase in the meaning of § 145 BGB, we are entitled to accept this offer within a period of two weeks. Unless we submit an offer, we are bound to it for two weeks.

§ 3 Prices and Payment

- (1) Unless otherwise agreed in writing, our prices are ex works Söhnstetten excluding packaging and shipping plus VAT as applicable. Costs of packaging and shipment are invoiced separately. IML™-steel industrial floor plates will be delivered on disposable pallets. Deliveries of smaller quantities are packed in carton boxes.
- (2) In the offer listed charges are non-binding calculated according to current tariffs. Tariff increases shall be borne by the purchaser.
- (3) Payment of the purchasing price is to be made exclusively on the accounts provided on the invoice. Deduction of discount is allowed only with special written agreement.
- (4) Unless otherwise agreed, the purchase price is to be paid within 8 days after delivery. Legal provisions shall apply with respect to the consequences of a default in payment.

§ 4 Offsetting and retention

The purchaser is only entitled to offset if the purchaser's counterclaims have been established at law or are undisputed. The purchaser shall only be entitled to practice retention if the counterclaim is based on the same contractual relationship.

§ 5 Delivery and shipping

- (1) If the customer defaults in acceptance or culpably violates other cooperation obligations, we are entitled to claim the compensation for losses incurred, including any extra expenses. Further claims remain reserved. If the preceding prerequisites exist, the risk of accidental loss or accidental deterioration of the purchase product shall pass to the customer upon the date at which he came into default of acceptance or debtor's delay.
- (2) We shall be liable in accordance with statutory provisions as far as the underlying contract of purchase is a transaction at a fixed date as defined by Article 286 paragraph 2 no. 4 BGB or Article 376 HGB. We shall also be liable in accordance with statutory provisions if, as a consequence of any delay in delivery for which we are responsible, the Ordering Party is entitled to claim that it no longer has an interest in the subsequent performance of the contract.
- (3) We are also liable under the statutory provisions if any delay in delivery is the result of a wilful or grossly negligent infringement of the contract for which we are responsible; culpability of our representatives or agents shall be attributed to us. If any delay in delivery is the result of a grossly negligent infringement of the contract for which we are responsible, our liability for compensation is limited to the foreseeable damage that may typically occur.
- (4) We are also liable under the statutory provisions insofar as the delay in delivery is based on a culpable violation of an essential contractual obligation on our part; in this case however our liability for damages shall be limited to the foreseeable typically occurring damage.
- (5) In addition, we are also liable to pay compensation for each completed week of delay as part of general delay compensation to the amount of 3% of the value of the shipment, but with a maximum of no more than 15% of the value.
- (6) Further legal claims and rights of the customer due to a delayed delivery remain unaffected.
- (7) The delivery of IML ® steel industrial floor plates to the construction site is carried out by 25-to-trucks. The Purchaser shall ensure that proper delivery by 25-to-truck and unloading at the construction site is guaranteed.

§ 6 Transfer of risk

- (1) Unless otherwise stated in the order confirmation, delivery "ex works" has been agreed.
- (2) Transport and other packaging will not be taken back. The purchaser shall be obligated to arrange for disposal of the packaging at his own expense. Collection by the ordering party is only possible by prior agreement.

§ 7 Retention of title

- (1) We reserve the ownership of the delivered goods until full payment, including all claims from follow-up and reorders. The supplier retains the right to take the delivered goods back if the customer is in breach of the contractual agreement, in particular in the case of delay in payment. Taking back of the subject of the contract by us represents withdrawal from the contract. After having retaken the goods, we are entitled to sell them, whereby the proceeds from realisation shall be offset against the amount owed by the Purchaser - less reasonable utilisation costs.
- (2) The buyer is obliged to handle the product carefully. In particular, he is obliged to provide at his own expense insurance against theft, fire and water damage at replacement value. As long as ownership has not been transferred, the purchaser must notify us in writing immediately if the delivered goods are seized or otherwise subjected to the intervention of any third party. If the third party is unable to refund to us the judicial and extrajudicial costs for an action as per § 771 ZPO, the customer is liable for the loss incurred.
- (3) The buyer is entitled to resell the goods in normal business transaction. The purchaser here and now assigns to us the receivables from the resale of the conditional goods in the amount of the final invoice total agreed with us (including added-value tax). This



assignment shall apply regardless of whether the goods have been resold without or after processing. The customer remains entitled to collect the claim even after assignment. Our authorisation to collect the debt ourselves remains unaffected by this. We will not collect the claim as long as the customer meets his payment obligations from the proceeds, is not in default of payment and has not filed for insolvency proceedings or payments are suspended.

(4) We commit ourselves to release the securities due to the customer's request, if their value exceeds the secured claims by more than 10 percent.

§ 8 Warranty and notice of defect

(1) Customer's warranty rights shall require that the contractual partner meets the obligations of examination and reproof according to § 377 HGB.

(2) Claims for defects shall become statute-barred 12 months after passing of the risk. The above provisions do not apply if the law according to Section 479 (claims under right of recourse) of the German Civil Code prescribes longer periods. Our consent must be obtained prior to any return of goods.

(3) If, despite all care being taken at our premises, the delivered goods contain a defect, we will at our election repair the goods or deliver substitute goods. The opportunity to carry out repairs within an appropriate period is always to be given to us. In case of subsequent service we undertake to bear all expenditures necessary for the elimination of the defects, in particular the expenses for transport, fares, work or material, as far as these are not increased by a transport of the goods to a location other than the place of performance. Recourse claims shall remain unaffected by the above regulation without restriction.

(4) If subsequent performance of the contract is not possible, the orderer may withdraw from the contract or reduce the level of payment.

(5) We shall be liable in accordance with statutory provisions insofar as the customer asserts claims for compensation for damages which are based upon malice aforethought or gross negligence on our part, including any wilful or gross negligence of our representatives or agents. As far as we are not accused of wilful breach of contract, our liability for claims for damages is limited to the foreseeable, typically occurring damage.

(6) Provided that we infringe on an essential contractual obligation through negligence, we are liable according to the legal provisions; however, also in this case the liability for damages is limited to the foreseeable, typically occurring damage.

(7) Liability for culpable injury to life, limb or health remains unaffected; this also applies to mandatory liability in accordance with the product liability law.

(8) Insofar as no other agreement differing from the above has been reached, liability shall be precluded.

§ 9 Total Liability

(1) Any further liability for compensation than that provided for in § 8 shall be excluded regardless of the legal nature of the asserted claim. This shall apply in particular for compensation claims for damages resulting from us being at fault when the contract is signed, on account of other breaches of duty or on account of tortious claims for compensation for property damage in accordance with § 823 of the German Civil Code (BGB). This also applies where the customer, in place of a claim to reimbursement of the damage in lieu of performance demands from us reimbursement of expenditure incurred in vain.

(2) If our liability for compensation is excluded or restricted, this also applies with respect to the personal liability for compensation of our employees, representatives and vicarious agents.

§ 10 Miscellaneous

(1) This contract and the entire legal relationship of the parties is subject to the law of the Federal Republic of Germany under exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

(2) Place of fulfilment is Söhnstetten, unless otherwise stated in the order confirmation. If the buyer is a merchant, our place of business shall be the legal venue.

(3) All agreements that are made between the parties for the purpose of the execution of this contract are stipulated in this contract.

(4) Should individual clauses be or become ineffective or should the stipulation therein be incomplete, the legal effectiveness of the other clauses remain unaffected by this fact.