

# Standard Terms of Sale and Delivery for Aleris Rolled Products Germany GmbH

## 1. General Terms, no Assignment

1. 1 The following Standard Terms of Sale and Delivery shall govern all our contracts, offers, deliveries and other services, whether present or future. The Customer's standard terms of business shall not apply even where they are transmitted to us in any confirmation letter or in any other way and we do not object to them.

1. 2 Any verbal ancillary arrangement, divergence from these Standard Terms, or modification or exclusion of these Standard Terms and any warranty or representation made by any of our employees or representatives shall require to be confirmed in writing in order to be valid. This shall extend to apply to any abrogation of this written form clause.

1. 3 The German version of these Standard Terms of Sale and Delivery shall be binding and alone decisive in the construction hereof, even in the event that any translation of these Standard Terms of Sale and Delivery has been provided to the Customer or executed by the parties.

1. 4 If any term or condition hereof or any other term or condition of the contract is or becomes invalid, then the contract as for the rest shall remain valid. The parties shall replace such invalid term or condition by that valid term or condition that as closely as possible attains the commercial result of the invalid term or condition.

1. 5 The Incoterms as amended at the time of entering the contract shall apply except where these Standard Terms of Sale and Delivery contain diverging terms or conditions.

1. 6 The assignment to any third party of any Customer's claim against us shall be excluded;

this shall not affect s. 354a German Commercial Code (Handelsgesetzbuch).

## 2. Offer and Contract

2.1 Our offers shall not be binding upon us. A contract shall be made validly only at our written confirmation of the order (order confirmation).

## 3. Quality, Quantity, Delivery, Passing of Risk and Call Orders

3. 1 Except where otherwise agreed, the appropriate German Industrial Standards (Europe) (DIN-EN) shall apply, otherwise the appropriate German Industry Standards (DIN). As for the rest, our goods shall be delivered in usual market quality and design, taking into account usual market tolerances as to measurements, weights and quality that are inherent in the manufacturing process. References to certain standards, materials specifications (Werkstoffblätter) or factory tests shall not be construed so as to contain any warranty as to certain characteristics. Public statements made by us, our agents or any manufacturer or manufacturer's agent, including but not limited to those made in advertising materials, regarding characteristics of our goods shall give rise to warranty claims on the Customer's part only where they have been made an integral part of a quality agreement (Beschaffensvereinbarung) between the parties.

3. 2 Weights shall be bindingly determined through weighing on officially calibrated scales. The weight shall be proved by presenting the weighing slip.

3. 3 Except where otherwise agreed, we shall

be entitled to deliver up to 10% – in case of specialities up to 30 % – more or less than the quantity or number of items ordered.

3. 4 Partial deliveries and performance by us shall be permitted except where they would constitute an unreasonable hardship for the Customer commercially.

3. 5 Except where otherwise agreed in writing, our deliveries shall be made at our discretion either ex factory or ex storage; this may also be the factory or storage of a third party. The risk shall pass to the Customer at or before delivery to the forwarder or other carrier; this shall apply even where the goods are delivered by our own employees. Where we have not received specific instructions from the Customer, we shall be responsible for selecting an appropriate carrier. The risk shall also pass to the Customer if goods are stored with us at the Customer's request.

3. 6 Our obligation to deliver and render services shall be subject to our having received our own supplier's delivery properly and when due.

3. 7 Statements as to delivery and performance dates shall be deemed to be estimates only except where otherwise agreed between the parties; in the case of estimates of delivery and performance deadlines, the Customer can only effectuate the falling due of our delivery and performance no sooner than one month following the expiry of the estimated delivery and performance deadline provided and, where applicable, extended under clause 3. 9. In the case of estimated delivery deadlines, the Customer shall accept the goods within a period of two weeks following notification that the goods are ready for taking delivery or shipment.

3. 8 Delivery times shall commence at sending off the order confirmation, however not before the Customer has delivered all documents, permits, clearances to be obtained by the Customer and the resolving of all technical matters.

3. 9 Delivery times shall automatically extend by a reasonable period in the event of any industrial action, including but not limited to strike and lawful lockout, and in the event of any other hindrance falling outside the sphere of our

responsibilities. The same shall apply where any such event occurs on our sub-supplier's part. The above events shall be deemed to fall outside the sphere of our responsibilities even where they occur while we are in default with our delivery. We shall inform the Customer as soon as possible of the beginning and end of any such event. If after entering the contract (e. g. due to mobilisation, any measure taken by any governmental authority including foreign trade measures) any event occurs that had not been foreseen by us and that (other than only for a limited duration) renders our performance more difficult, or the balance between performance and consideration is disturbed (other than only for a limited duration) to our disadvantage, then we may request an appropriate adjustment of the contract. If an adjustment of the contract is not possible or unreasonable for either party, we may rescind the contract. As for the rest, the statutory provisions on a lapse of the obligation to perform, the right of the debtor to refuse performance, on frustration of contract (Störung der Geschäftsgrundlage) and the right to terminate for good cause remain unaffected.

3. 10 For call orders, the Customer shall call upon the goods within a period of two weeks following our notification that the goods are ready for taking delivery or shipment. If calls are placed beyond the quantity ordered for a call order, we shall be entitled to deliver the quantity ordered only or to calculate the additional quantity at the current price.

3. 11 If the Customer does not accept delivery or call the goods on time, then notwithstanding our performance claim and any further rights and remedies we may claim payment of our additional cost for the unsuccessful offer and may store the goods at the Customer's cost and risk.

## 4. Prices and Cost

4. 1 Except where otherwise agreed in writing, all prices shall be ex factory or ex storage (this may also be the factory or storage of a third party). Where it is agreed that the delivery shall be made more than 3 months after entering the contract or where due to any delay falling within the Customer's sphere of responsibilities the delivery is made after expiry of 3 months after entering the contract, we shall be entitled to

increase the agreed prices appropriately if after entering the contract any increase in cost occurs, including but not limited to any increase in cost resulting from any collective bargaining agreement or price increase for materials.

4. 2 Statutory value added tax shall not be included in the prices; it shall be separately shown on the invoice at the statutory rate on the invoice date.

4. 3 Where goods are stored with us at the Customer's request, the resulting cost shall be paid by the Customer.

4. 4 If upon inspecting any asserted defect it is found that no warranty claim exists, then the Customer shall pay the cost of such inspection.

## 5. Payment

5.1 Payments shall be made within 30 days of the date of the invoice. Payments shall be deemed to have been made when due only if received by us or credited to our account without reservation at that time.

5. 2 For the duration of the Customer's payment default, default interest shall become payable at a rate of eight percentage points over and above the base rate, except where we are entitled to a higher rate of interest on any other legal basis. We reserve the right to assert any other or further damage or loss or other statutory default rights and remedies.

5. 3 Where any payment is made with means of payment that the Customer has obtained through discounting any acceptor's bill of exchange, the payment claim shall be deemed to have been satisfied only at payment of the bill by the Customer.

5. 4 If two or more claims against the Customer are outstanding and a payment made by the Customer is insufficient to satisfy all claims, then the allocation of the amount paid shall be pursuant to the statutory provisions (s. 366 par. 2 German Civil Code (Bürgerliches Gesetzbuch) even where the Customer has explicitly paid to satisfy a specific claim.

5. 5 Any set-off and the exercise of any statuto-

ry right of retention with or on the basis of any counterclaim on the Customer's part (e.g. for any defect of the goods) that is disputed by us or that has not been awarded in any final and unappealable judgement shall be excluded. The exercise of any right of retention shall be excluded also where the Customer's claims do not arise under the same contract.

5. 6 Where the Customer fails to comply with any payment date or where after entering the contract it becomes apparent for any other reason that our payment claims are endangered by a lack of financial capability on the Customer's part, we shall have all statutory rights and remedies, including but not limited to the right to retain our own performance until the consideration is paid or an appropriate collateral has been delivered, as appropriate, and the right to rescind the contract.

## 6. Defect Report, Remedies for Defects in Quality and Defects in Title, Customer's Instructions, Advice

6. 1 The Customer shall report any apparent defect in writing without undue delay and in any case no later than two weeks after receipt of the goods, and shall report any hidden defect in writing without undue delay after detection and in any case no later than two weeks after detection. These time limits shall be cut-off periods (Ausschlussfristen). Defect reports shall be deemed to have been given within the relevant time limit only where received by us prior to the expiry of such time limit.

6. 2 Our statutory liability in the event of the existence of any third party right based on intellectual property, whether registered or otherwise, ("Intellectual Property Rights") shall be limited to those Intellectual Property Rights that validly exist in the Federal Republic of Germany. Where according to the agreement between the parties the goods are to be resold abroad (into a "Foreign Country") or to used in any other way in any Foreign Country, then we shall also be liable pursuant to the statutory provisions for the non-existence in such Foreign Country of Intellectual Property Rights that could be asserted against the Customer. Where the parties have made no agreement on a resale or use in a Foreign Country but the Custo-

mer's corporate address is in a Foreign Country, we shall be liable for the non-existence of Intellectual Property Rights in the Federal Republic of Germany and in the country of the Customer's corporate address.

6. 3 Any claim on the Customer's part for any defect shall be limited to a claim to defect-free specific performance. We may elect to make such defect-free performance either by clearing up the defect or by delivering a defect-free item. If such defect-free performance fails, the Customer may elect to rescind the purchase contract or exercise the remedy of unilateral reduction of the purchase price (Minderung).

6. 4 To the extent we are liable for damages for any defect (on whatever legal basis, including any damages claim for general breach of contract, breach of any pre-contractual duty, or tortious claims), such liability for damages shall be limited as stipulated in clause 7 hereof.

6. 5 This shall not affect any recourse claims on the Customer's part pursuant to s. 478 German Civil Code (Bürgerliches Gesetzbuch). If we are liable for damages in the course of any such recourse pursuant to the law, our liability shall be limited as stipulated in clause 7 hereof.

6. 6 Any claim on the Customer's part for any defect shall become time-barred after one year, commencing at receipt of the goods. This shall not apply (1) in the event of any intentional breach or fraudulent concealment of the defect, (2) in the event of breach of any warranty for quality extended by us, and (3) regarding any item that in accordance with its usual use has been used for any building structure and has caused such building structure to become defective. Further, the above one-year limitation period shall not apply to damages claims for defects where the damage or loss results from any grossly negligent breach by our statutory representatives or our executives (leitende Angestellte) or the damage is personal injury or we are liable under tort. Where the defect consists in any third party's right on the basis of which surrender of the item may be claimed or in any other right registered on the land register, then the limitation period shall be three years. This shall not affect the statutory provisions on the limitation periods for recourse claims pursuant

to s. 479 German Civil Code (Bürgerliches Gesetzbuch) or on limitation periods and exclusion periods pursuant to the German Product Liability Act (Produkthaftungsgesetz).

6. 7 Regarding declassified goods and second-tier quality goods all warranty claims shall be excluded for defects the Customer has knowledge of at entering the contract. We shall also not be liable for any defects the Customer has failed to become aware of at the time of entering the contract due to the Customer's own gross negligence, except where we had fraudulently concealed such defect or had extended a warranty for characteristics of the goods.

6. 8 Regarding defects resulting from any instruction or specification received from the Customer, we shall be liable pursuant to the statutory provisions and according to these Standard Terms of Sale and Delivery only if we had agreed in writing as towards the Customer to assume the risk of any defect resulting from such instruction or specification. The Customer shall be responsible as towards us that instructions and specifications will not result in any defect of the goods manufactured and/or delivered by us, as the case may be, except where we had assumed the abovementioned risk of defects in writing.

6. 9 It shall be the Customer's duty to examine the suitability of the goods for the purpose for which they are intended by the Customer. Any preparations produced by us for the Customer, any advice provided by us and any recommendations made by us shall be made without founding any liability; they are to be carefully examined by the customer itself – if necessary with the obtaining of expert advice from a third party – prior to their implementation.

## 7. Limitation of Liability

7. 1 We shall be liable pursuant to the statutory provisions for any damage or loss resulting from any intentional or grossly negligent breach by our statutory representatives or our executives (leitende Angestellte) and for any personal injury.

7. 2 In the event of any intentional or grossly negligent breach by any ordinary agent

employed in our performance (einfache Erfüllungsgehilfen) and in the event of a slightly negligent breach of any material term or condition of the contract that is absolutely necessary for attaining the purpose of the contract and on the strict compliance with which the Customer must be able to rely, we shall be liable pursuant to the relevant laws limited to such damage or loss the type and scope of which had been foreseeable by us at entering the contract. In case of default in delivery or services on our part, the foreseeable damage caused by the delay is a sum of up to 5 % of the invoice value of the part of the delivery or service affected by the default.

7. 3 In the cases covered in clause 7. 2 hereof, our liability shall be limited to a maximum of three times the value of the relevant delivery or in the case of pure financial loss to a maximum of twice the value of the relevant delivery, but in any case to EUR 5,000,000 per event of damage and EUR 10,000,000 per calendar year.

7. 4 As for the rest, any claims on the Customer's part for direct or indirect damages (on whatever legal basis including any damages claims for breach of any pre-contractual duty, or tortious claims) shall be excluded. This shall not affect any statutory liability for the lack of any characteristic of the item warranted by us, for any fraudulently concealed defect or pursuant to the German Product Liability Act (Produkthaftungsgesetz).

7. 5 Damages claims of the Customer due to defects shall become time-barred in accordance with clause 6. 6 hereof. Other damages claims of the Customer shall become time-barred two years after the date on which the Customer obtains, or without the presence of gross negligence would have obtained, knowledge of the facts giving rise to the claim and of the identity of the person or entity causing the damage or loss, however no later than three years after the time of the event causing the damage. The previous sentence shall not apply in the event of any intentional or fraudulent breach, or any grossly negligent breach by our statutory representatives or our executives (leitende Angestellte), of any personal injury and in cases of tort and liability pursuant to the German Product Liability Act (Produkthaftungsgesetz).

7. 6 The above limitation of liability terms shall apply also to any damages claims on the Customer's part against our statutory representatives, executives (leitende Angestellte) and other agents employed in the performance of our obligations (Erfüllungsgehilfen).

## 8. Property Rights and Copyrights

8. 1 We reserve all and any property rights and copyrights in all and any drawings, illustrations, estimates of cost and other documents enclosed with any offer. Such documents may not be made accessible to any third party nor be used commercially without our prior consent, and shall be returned to us without undue delay at our request.

## 9. Retention of Title and Security

9. 1 We retain the title to the goods (the "Retained Goods") up to the satisfaction of all our claims (whether existing or future) arising from our business relations with the Customer. Where a current account is maintained with the Customer, this retention of title shall secure our relevant claim of the current balance at any time.

9. 2 Any processing or alteration of the Retained Goods performed by the Customer shall be deemed to be performed on our behalf, without resulting in any obligation on our part. Where the goods are processed together with other items that are not our property, we shall become a co-owner of the new item with a share equal to the proportion of the value of the goods to that of the other items processed at the time of the processing. For the event that Retained Goods are consolidated, mixed or mingled with chattels owned by the Customer in such a way that the Customer's item must be considered as the main item, the Customer herewith transfers to us the Customer's title to the overall item to an extent equal to the proportion of the value of the Retained Goods to that of the other consolidated, mixed or mingled items. For the event that Retained Goods are consolidated, mixed or mingled with chattels owned by any third party in such a way that the third party's item must be considered as the main item, the Customer herewith assigns to us the

Customer's compensation claim against such third party in an amount equal to the invoice total amount for the Retained Goods. The item created through consolidation or mingling (hereinafter the "New Item") and/or those (co-) ownership rights in the New Item that shall fall to us and/or shall be transferred to us under this clause 9. 2 and those compensation claims assigned to us under this clause 9. 2 shall secure our claim in the same manner as the Retained Goods under clause 9. 1.

9. 3 The Customer may resell the Retained Goods and/or New Item in the ordinary course of business subject to a retention of title. The Customer shall ensure that the claims under such resale contracts can be assigned to us in accordance with clauses 9. 4 and 9. 5 hereof. The Customer shall not dispose of the Retained Goods or New Item in any other way.

9. 4 The Customer's claims under any resale are herewith assigned to us. They shall secure our claims in the same manner as the Retained Goods. Where the Customer sells Retained Goods together with other goods not delivered by us, the assignment of the claim shall be deemed to cover only the invoice total relating to the resale of the Retained Goods. In the event of any resale of goods of which we have become a co-owner under clause 9. 2 hereof or pursuant to the statutory provisions covering the consolidation, mixing and mingling of items, the assignment of the claim shall be deemed to be limited to the extent of our title as co-owner.

9. 5 Where the Customer includes any claim from the resale of Retained Goods in any current account with any customer of the Customer, the Customer herewith assigns to us any resulting accepted balance or final credit balance for the Customer in an amount equal to the claims for the resale of such Retained Goods included in such current account. The third and fourth sentences of clause 9. 4 hereof shall apply *mutatis mutandis*.

9. 6 The Customer may collect the claims assigned to us for the resale of the Retained Goods and/or New Item. The Customer may not assign such claims to any third party, including any assignment under a genuine factoring ag-

reement.

9. 7 We may revoke the authority to resell the Retained Goods and/or New Item according to clause 9. 3 hereof and the authority to collect the claims assigned to us according to clause 9.6 hereof in the event of the Customer's payment default or cessation of payments and in the event of any petition for the commencement of insolvency proceedings or in other cases where the Customer's credit standing and trustworthiness is impaired. In the event of a revocation of the resale and/or collection authority the Customer shall without undue delay inform the Customer's purchasers of the assignment of the claims to us and shall surrender all and any information and records necessary to collect the claims. Further in such event the Customer shall surrender and/or transfer to us any security provided for such claims against the Customer's purchasers.

9. 8 The Customer shall inform us without undue delay of any seizing or other legal or physical impairment or endangering of the Retained Goods or any other security right provided to us.

9. 9 The Customer shall insure the Retained Goods adequately against fire, water and theft at replacement value. The Customer herewith assigns to us the Customer's claims under the relevant insurance policies.

9. 10 For the event of payment default or any other not only marginal breach of contract by the Customer and for the event of any cancellation of the contract, the Customer herewith consents to our removing and/or cause to be removed from the Customer any Retained Goods and/or (where we are the sole owner) the New Item as defined in clause 9. 2 hereof. Such removal shall be construed so as to constitute a rescission of the contract only where we explicitly state this. For these purposes and for the purpose of any general inspection of the Retained Goods, the Customer shall grant our authorised representative access at all times.

9. 11 After prior warning we may realise such removed Retained Goods, provided that the realisation proceeds (after deduction of reasonable realisation cost) shall be set off against the

Customer's debts.

9. 12 The Customer herewith grants us a charge in any materials made available for the purpose of processing the order and in those claims replacing it, by way of security for all existing and future claims arising under the business relation with the Customer.

9. 13 To the extent the retention of title or the assignment of claims is invalid or unenforceable due to any mandatory foreign law, that security right equivalent to the retention of title or assignment of claims in such region shall be deemed to have been agreed. If this requires the Customer's co-operation, the Customer shall take all steps necessary to create and maintain such security right.

## 10. Tools

10.1 To the extent we manufacture or acquire tools for deliveries to the Customer, these shall remain our property even where the Customer pays the cost of such tools fully or in part. The tools shall be used exclusively for deliveries to the Customer as long as the Customer satisfies the Customer's obligations as towards us. If twenty-four (24) months have expired since the last delivery was made or if the Customer's contribution to the acquisition of the tool has been amortised, then we may elect to use the tool for other purposes or scrap it.

## 11. Place of Performance, Legal Venue, Governing Law

11. 1 The place of performance for our deliveries is the factory or storage from which the goods are held for taking delivery or shipped; this may also be the factory or storage of a third party. Place of performance for payments shall be Koblenz.

11. 2 If the Customer is a Commercial Code business entity (Kaufmann), a public-law corporation or a public-law special fund, Koblenz shall be the exclusive legal venue for any dispute arising directly or indirectly under the contract. We may elect instead to bring any such dispute before any other court that has jurisdiction pursuant to the law.

11. 3 The contract shall be governed by the laws of the Federal Republic of Germany, to the exclusion of the UN Convention on the International Sale of Goods.

### Notice

We electronically store and process the data of the Supplier and any involved third party to the extent this is necessary for due and proper performance of the contract. In the course of such processing purpose, such data may also be transmitted to other companies within the Aleris Group.

Status:03/2013