



General Terms and Conditions

dated 01.01.2019

I. Scope of application

1. On the contractual relationship between Immes-Stahl Handelsges. mbH (hereinafter referred to as IMMES-STAHL) and its contractual partners (customers or suppliers) shall be governed exclusively by the following General Terms and Conditions of IMMES-STAHL.
2. These General Terms and Conditions apply exclusively, even without separate notice, to all – including future – contracts with companies, legal entities under public law and special funds under public law for deliveries and other services, including contracts for work and services and the delivery of unacceptable items. In the case of drop shipments, the General Terms and Conditions of the commissioned supplier shall also apply.
3. Our terms and conditions are accepted by the contractual partner upon placing an order, but at the latest upon receipt of the goods. They apply for the entire duration of the business relationship with us, even if the financing is provided by third parties.
3. Any other terms and conditions as well as the contractual partner's terms and conditions of purchase and sale, both supplementary and contradictory, shall not be recognised. This shall apply even if IMMES-STAHL begins to execute the contract in the knowledge of the use of different conditions, even if IMMES-STAHL does not expressly object to the validity of the different conditions.

II. Offers and conclusion of contract

1. The offers of IMMES-STAHL are subject to change and non-binding and only represent an invitation to submit offers. This applies in particular to prices and delivery times.
2. We reserve the right to make changes to texts and illustrations in the offers and brochures.
3. All quantities, dimensions and weights are to be understood under the usual tolerances. In the event of errors, we reserve the right to correct them.
4. Offers or orders of the contractual partner, verbal agreements, promises, assurances and guarantee declarations of our employees in connection with the conclusion of the contract only become binding upon our written confirmation. The written form is also maintained by the transmission of faxes and by e-mail.
5. In case of doubt, the Incoterms in their latest version shall be decisive for the interpretation of commercial terms. Unless otherwise agreed, the prices and conditions shall apply upon conclusion of the contract EXW delivery plant or warehouse. The goods are calculated "gross" for "net". Partial deliveries are permissible.
6. For deliveries to other EU member states, the contractual partner is obliged to provide us with his VAT identification number before concluding the contract.



III. Prices

1. The prices apply to goods of average quality and customary quality.
2. Unless otherwise agreed in individual cases, the current prices of IMMES-STAHL ex warehouse at the time of conclusion of the contract shall apply, plus statutory value added tax, packaging costs and plus any price surcharges valid on the day of delivery.
3. Any customs duties, fees, taxes and other public charges shall be borne by the customer.
4. If information or other external costs included in the agreed price change later than four weeks after conclusion of the contract or if they arise again, we are entitled to a price change to the corresponding extent.

This also applies to drop shipments if the prices of our supplier change. This does not apply if the cost change was specifically foreseeable.

In the case of framework agreements, the above provision shall apply accordingly. The price increase is limited to the actual cost change of the relevant calculation component and will be communicated to the buyer immediately. The buyer is within two weeks after receipt of the notification, under exclusion of further rights, to the extraordinary termination of the framework contract. Goods already produced will be invoiced in accordance with the original conclusion of the contract.

5. IMMES-STAHL shall deliver the goods in a customary manner. Costs for the return of the transport and all other packaging shall be borne by the customer. Packaging that goes beyond the purpose of transport or other special protection, e. g. for long-term storage or storage, requires an express agreement.

IV. Performance data (dimensions, weight, quality, drawings, illustrations)

1. Deviations in dimensions, weight and quality are permitted in accordance with DIN and EN or the applicable standards.

References to standards and similar regulations, to factory test certificates and similar certificates as well as information on qualities, grades, dimensions, weights and usability of the goods are not assurances or guarantees, nor declarations of conformity and corresponding markings than CE and GS.

2. The weights determined by weighing are decisive for invoicing. If desired, the weight verification is carried out by presenting the weighing protocol. Unless an individual weighing is usually carried out, the total weight of the shipment applies in each case. Differences compared to the calculated individual weights are distributed proportionately among them. We are entitled to determine the weight without weighing according to standard (theoretical) plus 2.5% (commercial weight). Quantities, bundle numbers or the like specified in the dispatch notice or invoice are non-binding for goods calculated by weight.



V. Delivery periods

1. Our delivery obligation is subject to correct and timely self-delivery. A deviation from the deadline does not entitle the contractual partner to any claims.

2. Information on delivery times is approximate. Expressly binding delivery periods begin with the date of our order confirmation and apply only under the condition of timely clarification of all details of the order and timely fulfillment of all obligations of the buyer, such as e. g. providing of all official certificates, providing of letters of credit and guarantees or payment of down payment.

3. The time of dispatch ex-works or warehouse shall be decisive for compliance with explicit agreed delivery periods and dates. They shall be deemed to have been fulfilled with notification of readiness for dispatch even if the goods cannot be dispatched on time through no fault of our own. Exceeding a delivery date confirmed with reservation does not constitute a delay.

4. In the event of a delay in delivery, the buyer is only entitled to the rights under § 323 BGB if the buyer has set us a reasonable grace period and has combined this with the declaration that he refuses to accept the service after the expiry of the deadline, deviating from § 323 BGB. After unsuccessful expiry of the grace period, the buyer can only withdraw from the contract to the extent that the contract has not yet been fulfilled, unless partial deliveries made are not usable for the buyer. In such cases, claims for damages shall be governed by Section XIII of these Terms.

5. In cases of force majeure, the contractual obligations of both parties shall be suspended. The dates and deadlines for the fulfillment of contractual obligations are postponed according to the duration of the event. This also applies if we are already in default during the occurrence of force majeure. Cases of force majeure include in particular labour disputes in own and third-party companies, serious transport obstructions, serious machine breakage, sovereign measures and other circumstances for which no party is responsible. The event of force majeure must be reported to the other contracting party immediately. At the earliest after six weeks of the force majeure event, each of the contracting parties is entitled to withdraw from the contract to the exclusion of any obligation to pay compensation in this regard. In the event of such a withdrawal, the buyer must pay the purchase price attributable to the still fulfillable part of the delivery and pay compensation for our expenses. If the buyer has a legitimate interest in rejecting the partial delivery, he only owes reimbursement of our expenses.



6. The buyer undertakes to meet the safety and reliability requirements issued by the German customs administration for certification as an "Authorized Economic Operation" (ZWB/AEO). Unless the buyer himself has or has applied for recognition as an Authorized Economic Operator, he undertakes to submit to us a separate declaration of commitment in accordance with a customs model to comply with the safety and reliability requirements. The buyer undertakes to inform us immediately if compliance with the safety and reliability requirements is violated by him or by the auxiliary person employed by him in the context of the fulfillment of the contract or if their compliance is no longer ensured. We have the right to withdraw from the respective contract if the buyer does not meet the safety and reliability requirements necessary for recognition as an Authorized Economic Operator or does not provide us with a security declaration on request.

or the buyer or the auxiliary persons employed by him in the context of the performance of the contract culpably violate this security and reliability requirement in a serious or repeated manner.

VI. Payment

1. Unless otherwise agreed or stated in our invoices, the purchase price is due immediately after delivery without discount deduction and must be paid in such a way that we can dispose of the amount on the due date. Costs of payment transactions shall be borne by the buyer. In all other respects, the buyer shall be in default 10 days after the due date of our claim, without the need for a reminder. The buyer may only offset claims that are undisputed or have been legally established; He is only entitled to rights of retention to the extent that they are based on the same contractual relationship.

2. In the event of exceedances of the term of payment and/or default, we shall charge interest at the rate of 9 percentage points above the base interest rate, unless higher interest rates have been agreed. We reserve the right to assert further damage caused by default.

3. If, after conclusion of the contract, it becomes apparent that our payment claim is endangered by a lack of solvency, or if the buyer is in default of payment with a significant amount or if other circumstances occur that indicate a significant deterioration in the buyer's solvency after conclusion of the contract, we are entitled to the rights under § 321 BGB. We are then also entitled to make all claims not yet due from the current business relationship with the buyer due and existing direct debit authorizations according to Section X. 5.

4. An agreed discount always refers to the invoice value and presupposes the full settlement of all due liabilities of the buyer at the time of discounting. Unless otherwise agreed, discount periods begin from the invoice date.



VII. Copyright

IMMES-STAHL reserves the copyright to its illustrations and drawings and other documents.

VIII. Acceptance

1. If acceptance has been agreed, it can only take place in the delivery plant or our warehouse immediately after notification of readiness for acceptance. The personal acceptance costs shall be borne by the buyer, the material acceptance costs shall be calculated in accordance with the price indication of the supplier.
2. If the acceptance does not take place without our fault, not on time or not completely, we are entitled to charge the goods without acceptance and either to ship them or to store them at the expense and risk of the buyer.

IX. Call-off orders, continuous deliveries

1. In the case of contracts with continuous delivery, call-offs and grades for approximately equal monthly quantities shall be given to us; otherwise, we shall be entitled to make the provisions ourselves at our reasonable discretion.
2. If the individual call-offs exceed the total contractual quantity, we are entitled, but not obliged, to deliver the additional quantity. We may charge the additional quantity at the prices valid at the time of call-off or delivery. If the total call-offs fall below the contractual quantity, we are entitled to charge the difference quantity and either to ship it at the expense and risk of the buyer or to store it at the expense and risk of the buyer.

X. Delivery, transfer of risk and default of acceptance

1. Delivery is ex works or ex warehouse. At the request of the customer, the goods will be shipped to another destination (shipment purchase). Unless otherwise agreed, IMMES-STAHL is entitled to determine the type of shipment (in particular transport company, shipping route and packaging) itself.
2. Goods reported ready for dispatch in accordance with the contract must be called off immediately, otherwise we are entitled to charge them after a reminder and to send or store them at our discretion at the expense and risk of the buyer and to take all measures necessary to receive the goods. In this case, the purchase price is due 30 days after the invoice date.
3. If, through no fault of our own, transport on the intended route or to the intended place becomes impossible or significantly more difficult in the intended time, we are entitled to deliver by another route or to another place; the additional costs incurred shall be borne by the buyer. The buyer will be given the opportunity to comment beforehand.
4. Upon handover of the goods to a forwarder or carrier, but at the latest when leaving the warehouse or the delivery plant, the risk, including that of confiscation of the goods, shall pass to the seller in all transactions, including carriage paid and free home deliveries. We only provide insurance at the instructions and expense of the buyer. The obligation and costs of unloading shall be borne by the buyer.



5. The goods are delivered unpacked and not protected against rust. If commercially available, we deliver packaged. In our experience, we provide packaging, protective and/or transport aids at the expense of the buyer. They will be taken back at our warehouse. We do not assume the costs of the buyer for the return transport or for his own disposal of the packaging.
6. In the event of transport damage, the buyer must immediately arrange for a statement of facts with the cooperation of the carrier and send it to us.
7. We are entitled to make partial deliveries to a reasonable extent. Furthermore, we are entitled to exceed and fall below the agreed delivery quantities appropriately.

XI. Retention of title

1. All delivered goods remain under ownership (reserved goods) until all claims, in particular the respective balance claims, to which we are entitled within the framework of the business relationship have been fulfilled (balance reservation). This also applies to future and conditional claims, e.B. from acceptance bills, and also if payments are made on specially designated claims.

This balance reservation expires definitively with the settlement of all claims still outstanding at the time of payment and covered by this balance reservation.

2. The buyer may combine or mix the reserved goods with goods that do not belong to us within the framework of ordinary business operations. In this case, we acquire co-ownership Edelstein. § 947, 948 BGB.

3. The buyer may process or process the delivered goods within the framework of ordinary business operations. The treatment or processing by the buyer is carried out for us on our behalf, but without costs or obligation for us. An acquisition of ownership by the buyer of the reserved goods in accordance with § 950 BGB (German Civil Code) in the event of the creation of a new item does not take place in any case. If our ownership expires due to combination or mixing, the buyer hereby transfers the ownership rights to which he is entitled to the new stock or the item to the extent of the invoice value of the reserved goods and stores them for us free of charge. Our co-ownership rights shall be deemed to be goods subject to retention of title within the meaning of No. 1. To the extent that if we lose (co-)ownership of goods subject to retention of title through their use for the fulfilment of contracts for work – for example by connection with a plot of land or installation in a building – the buyer hereby assigns to us the claim against his customer in accordance with section 4 below.

The buyer may only use the reserved goods in the ordinary course of business under his normal terms and conditions as long as he is not in default. sell, provided that the claims from the resale in accordance with Nos. 4 to 6 are transferred to us. He is not entitled to other dispositions of the reserved goods.



4. The claims arising from the resale of the reserved goods shall already be assigned to us together with all securities that the buyer acquires for the claim. They serve as security to the same extent as the reserved goods. If the reserved goods are sold by the buyer together with other goods not sold by us, the claim from the resale shall be assigned to us in the ratio of the invoice value of the reserved goods to the invoice value of the other goods sold.

5. The buyer is entitled to collect claims from the resale. This direct debit authorization expires in the event of our revocation, but at the latest in the event of default in payment, non-redemption of a bill of exchange or application for the opening of insolvency proceedings. We will only make use of our right of revocation if, after conclusion of the contract, it becomes apparent that our payment claim from this or other contracts with the buyer is endangered by his lack of solvency. At our request, the buyer is obliged to inform his customers immediately of the assignment to us and to hand over the necessary documents to us.

6. The buyer must inform us immediately of any seizure or other impairment by third parties. The buyer shall bear all costs that must be incurred to cancel access or to return the reserved goods, unless they are replaced by third parties.

7. If the buyer is in default of payment or if he does not redeem a bill of exchange when due, we are entitled to take back the reserved goods, to enter the buyer's premises for this purpose if necessary and to sell the reserved goods in the best possible way while offsetting the purchase price. The same applies if, after conclusion of the contract, it becomes apparent that our payment claim is endangered. The return is not a withdrawal from the contract. Provisions of the Insolvency Code remain unaffected.

8. If the invoice value of the existing securities exceeds the secured claims including ancillary claims (interest, costs, etc.) by more than 50 % in total, we shall be obliged to release securities of our choice at the request of the buyer.

9. If the retention of title pursuant to this Section XI is not effective under the law in whose area the goods are located, a security corresponding to this Section XI shall be deemed to have been agreed. If the cooperation of the buyer is necessary for the creation of such rights, he must take all measures necessary to establish and maintain such rights.

XII. Claims of defects

1. The absence of defects of our goods is measured exclusively according to the expressly contractual agreements. The time of the transfer of risk (Section X 4) is decisive. We assume no liability for the resaleability or suitability of the goods for a particular use, unless expressly agreed. In the case of goods that have been sold as declassified material, the buyer is entitled to the stated reasons for declassification and such defects. With which he usually has to reckon, no role due to material defects. When selling Ila goods, our liability for material defects is excluded.



2. Material defects of the goods must be reported in writing immediately no later than seven days after delivery. Defects that cannot be discovered within this period even with the most careful examination must be reported in writing – with immediate cessation of any processing – immediately after discovery, at the latest before expiry of the agreed or statutory limitation period. The buyer is expressly informed that in the case of steel delivered by us, there may be material-related inconsistencies or irregularities that could not be avoided in the manufacturing process and, despite the greatest care, are not always recognizable to our suppliers before delivery. Such inconsistencies or irregularities often only become visible during machining or forming processes. The buyer is responsible for a special duty of care and inspection in processing and forming processes before and after forming. All goods delivered by us must be carefully examined for their external and internal properties before further processing, before installation in other objects and before they are placed on the market.

In the event of a resale of our goods in processed and processed or unaltered condition, the buyer, his customer and other third parties who process or process the goods as intended, undertakes to transmit the aforementioned safety instructions and to impose the aforementioned due diligence and inspection obligations on them.

3. After an agreed acceptance of the goods by the buyer, the complaint of defects that were detectable in the agreed type of acceptance is excluded. If a defect has remained unknown to the buyer as a result of negligence, he can only assert rights due to this defect if we have fraudulently concealed the defect or have assumed a guarantee for the quality of the item.

4. In the event of complaints, the buyer must immediately give us the opportunity to inspect the rejected goods; upon request, the rejected goods or a sample thereof shall be made available to us at our expense. If the buyer does not comply with this request or other obligations to cooperate, all rights due to the material defect shall lapse. In the event of unjustified complaints, we reserve the right to charge the customer freight and handling costs as well as the inspection effort at customary prices.

5. In the event of a justified, timely notification of defects, we may, at our discretion, remedy the defect or deliver defect-free goods (subsequent performance). In the event of failure or refusal of supplementary performance, the buyer may withdraw from the contract or reduce the purchase price after unsuccessful expiry of a reasonable period of time. If the defect is not significant or if the goods have already been sold, processed or redesigned, he is only entitled to the right of reduction.

6. We shall only assume expenses in connection with subsequent performance if they are reasonable in individual cases, in particular in relation to the purchase price of the goods, but in no case more than 150% of the purchase price. We shall only assume further expenses in accordance with Section XI of these Terms and Conditions.



7. Further claims of the buyer are governed by Section XIII of these conditions. Recourse rights of the buyer according to §§ 478, 479 BGB remain unaffected. We are not liable for contractual liability extensions, guarantee commitments or non-mandatory compensation services of the buyer towards his customers or third parties.

8. We do not recognize lump sums for complaints or damages.

XIII. Damages and other liability

1. Unless otherwise stated in these General Terms and Conditions, including the following provisions, Immes-Stahl shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.

2. Due to violation of contractual and non-contractual obligations, in particular due to impossibility, delay, fault in the initiation of the contract and tort, we are liable – also for our executive employees and other vicarious agents – only in cases of intent and gross negligence, limited to the contractually typical damage foreseeable at the time of conclusion of the contract. In all other respects, our liability is also excluded for damage caused by defects and consequential damages as well as for loss of production and loss of profit.

3. These restrictions shall not apply in the event of culpable breach of essential contractual obligations, insofar as the achievement of the purpose of the contract is jeopardised, in the case of culpably caused damage to life, limb and health and also not if and to the extent that we have assumed the guarantee for the quality of the sold item, as well as in cases of mandatory liability under the Product Liability Act. The rules on the burden of proof remain unaffected by this.

4. Immes-Stahl shall only be liable for damages – regardless of the legal grounds – in the event of intent and gross negligence.

XIV. Statute of limitations

1. Notwithstanding § 438 (1) No. 3 BGB, the general limitation period for claims arising from material defects and defects of title is one year from delivery. Insofar as acceptance has been agreed, the limitation period begins with acceptance.

2. However, if the goods are a building or an item that has been used for a building in accordance with its usual use and has caused its defectiveness (building material), the limitation period in accordance with the statutory regulation is 5 years from delivery (§ 438 para. 1 no. 2 BGB). Statutory special provisions for claims for return in rem by third parties (§ 438 para. 1 no. 1 BGB), in case of fraudulent intent on the part of the seller (§ 438 para. 3 BGB) and for claims in supplier recourse in the case of final delivery to a consumer (§ 479 BGB) also remain unaffected.

3. The above limitation periods of the sales law also apply to contractual and non-contractual claims for damages of the customer based on a defect in the goods (consequential damages), unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. The limitation periods of the Product Liability Act remain unaffected in any case. Otherwise, the statutory limitation periods shall apply exclusively to claims for damages by the customer in accordance with Section XII of these GTC.





4. Unless otherwise agreed, contractual claims arising from the buyer against us on the occasion of and in connection with the delivery of the goods shall become statute-barred one year after delivery of the goods. This period does not apply to goods that are used for a building in accordance with their usual use and have caused its defectiveness. This does not affect our liability for intentional or grossly negligent breaches of duty, culpably caused damage to life, body and health as well as the statute of limitations for recourse claims according to §§ 478, 479 BGB.

XV. Proof of export

If a buyer who is resident outside the Federal Republic of Germany or whose authorized representative picks up goods and transports or ships them to the outer territory, the buyer must provide IMMES-STAHL with the proof of export required for tax purposes. If this proof is not provided, the buyer must pay the VAT rate applicable to deliveries within the Federal Republic of Germany from the invoice amount.

XVI. Place of performance, place of jurisdiction and final provision

1. These GTC and all legal relationships between IMMES-STAHL and the contractual partner shall be governed by the law of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods. Prerequisites and effects of the retention of title in accordance with Section X. of these GTC are subject to the law of the respective location of the item, insofar as the choice of law made in favor of German law is inadmissible or ineffective.

2. If the contractual partner is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the registered office of IMMES-STAHL in Neukirchen-Vluyn. However, IMMES-STAHL is also entitled to bring an action at the general place of jurisdiction of the contractual partner.

3. Should any provision of these GTC be or become invalid, the validity of these GTC shall not be affected in all other respects. The invalid provision shall be replaced by the statutory provision.