

Bollinghaus Portugal - Aços Especiais, SA
Bollinghaus Conditions of Sale
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1. Introduction

These conditions shall form an integral part of all offers and agreements for the sale of goods entered into by Bollinghaus Portugal - Aços Especiais, SA (hereafter called Bollinghaus). Any condition put forward by the Buyer in its order or otherwise will only have effect if accepted by Bollinghaus in writing.

2. Offer and acceptance

An offer from Bollinghaus is valid for a period of 14 days from the date of issue, unless otherwise expressly stated in the offer. Bollinghaus may revoke an offer at any time prior to receiving the Buyer's acceptance.

Bollinghaus will confirm the agreement by an order acknowledgement and an agreement will only come into being upon issue of such acknowledgement.

3. Specifications

The goods shall meet the specifications agreed. If no specifications are agreed, the goods shall meet the general specifications applied for the type of goods sold by Bollinghaus at the time of delivery.

Statements in product information, handbooks, web sites, price lists or other information regarding the goods will only be binding on Bollinghaus if expressly referred to in an offer or agreement.

4. Delivery

The agreed time of delivery means the date on which the goods are anticipated to be ready for dispatch from Bollinghaus (not delivery date according to Incoterms). Time of delivery shall be considered approximate. Bollinghaus is entitled to divide and deliver the goods in different lots. If no delivery time is agreed, delivery shall be made according to Bollinghaus's capacity planning.

Should the delivery be delayed to such an extent that it would be unreasonable to request the Buyer to take delivery of the goods, the Buyer will without obtaining any remedies, be entitled to terminate the purchase of the goods delayed by giving written notice thereof to Bollinghaus. However, this right shall not apply unless the delivery has been delayed by more than three months. If Bollinghaus has notified a specific new delivery date, notice of termination must be given within five days of such notification.

Delivery terms shall be interpreted according to Incoterms 2000 (with the exception of first paragraph of this section). If no delivery term is agreed Ex Works (EXW) the mill of Bollinghaus choice, shall apply.

In the event that the quantity of the goods is agreed on the basis of weight, such weight shall be considered to be approximate and the quantity to be supplied can be adjusted by Bollinghaus to deviate up to 10%(+/-) from the agreed weight of the total order for each type of product/steel grade and the price adjusted accordingly. The weight or quantity printed or otherwise stated on the goods supplied by Bollinghaus shall be deemed as correct, unless proven otherwise.

Bollinghaus shall not be liable for any direct or indirect damage or consequences attributable to a delayed delivery.

5. Defective goods and shortages

The goods delivered shall be free from defects (faults). The goods shall only be regarded as defective if the goods do not meet the specifications agreed expressly for the particular delivery, or if the goods do not meet Bollinghaus's general specifications at the time of delivery. Bollinghaus is not liable for any function, quality or property of the goods other than that expressly stated above and any terms implied whether by statute or otherwise relating to quality or fitness for purpose are hereby excluded. Goods sold as non-prime or under similar description are sold "as is" which means that all rights to remedies and compensation for defects are waived.

In the event of any defects or shortages in the goods, the Buyer shall give notice to Bollinghaus in writing within one week of the goods arriving at their final destination, in accordance with the agreed delivery term between the parties. For defects that could not reasonably have been detected upon arrival of the goods at their final destination, the Buyer shall notify Bollinghaus in within two weeks of the date the Buyer noticed the defect. However, notification made more than six months after the date on which the risk for the goods was transferred to the Buyer will not have any legal effect. If notification is made too late, Bollinghaus is not obliged to perform any remedy or pay any compensation.

In the event of any defects or shortages in the goods, and if the Buyer has notified Bollinghaus in due time, in accordance with the terms stated above, Bollinghaus shall at its own expense and within reasonable time at its own option either rectify the fault or deliver new and faultless goods or in the event of a shortage, deliver the missing quantities – at the agreed named place of destination.

Instead of correcting a defect or shortage Bollinghaus shall also always have the right to credit the Buyer for a decrease in the value of goods commensurate to the fault or shortage. If the goods have been prepaid, Bollinghaus shall in such circumstances repay the credited amount. Repayment will be made without interest unless the repayment has been unreasonably withheld. Faulty goods shall be handed over to Bollinghaus – at the agreed named place of destination before any replacement goods are delivered or crediting/repayment is made.

Apart for the remedies and compensation expressly set out in this agreement or a separate agreement with Bollinghaus. The Buyer cannot invoke any other remedies in respect of a defect or shortage in the goods.

6. Force majeure

Neither party shall be liable for delay in performing or failure to perform its obligations if the delay or failure results from events or circumstances outside their reasonable control such as war, fire, labour disputes (including those initiated by a party of this agreement), trade disputes, refusals to grant licences, with the exception for due payment. Such delay or failure shall not constitute a breach of this agreement and time for performance shall be extended by a period equivalent to that during which performance is so prevented. If such a delay or failure persists for more than three months, either party shall be entitled to terminate this agreement to the extent of goods not yet delivered to the Buyer. In the event of such a termination, neither party will be entitled to any compensation, but any prepayment for goods not delivered shall be refunded and goods in transit not delivered shall be reverted.

7. Retention of title

(i) Bollinghaus holds the title to the goods delivered until the Buyer has made full payment for the goods. (ii) Bollinghaus also holds title to the goods delivered until the Buyer has made full payment of all other monies due from the Buyer to Bollinghaus. (iii) Until passes Bollinghaus has the right to recover any goods in the Buyer's possession or control to which it holds the title and Bollinghaus is hereby given the right to enter any land or building where the goods are stored to collect such goods. (iv) If the Buyer processes or commingles the unpaid goods into/or to form part of a new project Bollinghaus is granted title to the new object. Bollinghaus is granted title to the new object proportionate to the value of the unpaid goods in the new object until such time as it has received full payment for the original goods. (v) If the Buyer sells any unpaid goods or new object the Buyer hereby assigns a proportion of its claim on any third party equivalent to the debt for the unpaid goods/new object sild. (vi) Each sub clause (i)-(v) above shall have affect as a separate clause and accordingly in the event of any of them being unenforceable for any reason the others shall remain in full force and effect.

8. Payment

Agreed prices do not include Value Added Tax or any other tax or duty unless expressly stated (including Incoterms). If no payment terms or penalty interest terms are agreed, (i) payment shall be made within 30 days from the date of invoice and (ii) penalty interest of 6% p.a. above the official Repo Rate of the European Central Bank or the penalty interest according to the law of the country of the Buyers domicile, whichever is the highest, shall be paid from the due day of the invoice.

9. Entire agreement

This agreement with its enclosures and appendices (e.g. order acknowledgement and specifications) agreed in writing contains the entire agreement between the parties. This agreement will therefore supersede all previous and contemporaneous negotiations, commitments and understandings between the parties, whether written or oral, with respect to the goods covered by this agreement.

10. Governing Law and Jurisdiction

This Agreement shall be governed and construed pursuant to the laws of the Portugal. The Parties shall submit any dispute or litigation arising from or related to this Agreement including the breach, termination or invalidity and indemnity thereof to the exclusive jurisdiction of the courts of law of Lisbon

Alternatively Bollinghaus shall in its sole discretion be entitled to choose to have recourse to competent courts in and Laws of the Buyer's country for purposes of collecting matured debts of the Buyer.

11. General limitation of liability

Whit the exception of what is expressly provided for in these Conditions of Sale or otherwise agreed, Bollinghaus shall in no circumstances, including product liability, be held liable for any incidental, indirect or consequential loss or damage including, but not limited to, loss of profit, loss of production, discarded production or claims from the Buyer's customer. This limitation, however, does not apply in the event of gross negligence or intent.

Bollinghaus has no liability for any claim whatsoever when notification is made more than six months after the date on which the risk for the goods was transferred to the Buyer.