

TERMS AND CONDITIONS OF SALE AND DELIVERY FOR INTERNATIONAL TRANSACTIONS OF SELVE GMBH & CO. KG (SELVE) [LAST UPDATE OCTOBER 2023]



To transactions with customers who have their seat outside the Federal Republic of Germany, the United Nations Convention on Contracts for the International Sale of Goods (CISG) applies unless amended or supplemented by the following terms.

1. General provisions

1.1. Deliveries, services and offers are made exclusively on the basis of these terms and conditions. This excludes in particular the validity of the German standard building contract terms VOB Parts A and B.

1.2. Deviations from these terms and conditions are only effective if confirmed in writing. The customer's purchasing conditions do not apply.

2. Use of our products, application examples, specialist planning services

2.1. SELVE products, as well as their accessories, have been designed for applications in the professional construction of roller shutters. Our products are intended for processing by specialist companies in the window manufacturing, metal construction, craft sectors and the like, which are familiar with the acknowledged rules of technology, particularly in the field of door, window and roller shutter construction, and which have knowledge of all relevant country-specific DIN standards and local guidelines of the guilds and trade associations.

2.2. All documents generally issued by SELVE that deal with the combination, assembly, arrangement and processing of SELVE products, as well as reports about combinations and systems already executed are merely proposals for application without a binding technical statement for specific applications. Before any use of such documents, customers must first check in their own responsibility if the proposals made are in all respects suitable and relevant for their specific purpose, as the number of practical installation and load instances cannot be covered in this kind of document.

2.3. If a customer requires binding information, in particular in regard to the installation of the elements, about building physics-related problems, such as statics, fastening, thermal protection, mois-

ture protection, fire protection or sound protection, etc., professional consulting companies, specialist planners or experts must be commissioned. Such specialist planning and other services are not part of our offer and the contract of sale, unless a specific agreement to that effect has been concluded.

3. Conclusion of contract, self-supply reservation

3.1. Offers by SELVE are binding, unless expressly stated to be subject to change. Technical information is subject to change within reason, likewise the adjustment of our products to future standardisation.

3.2. Upon placing an order, the customer makes a binding commitment to purchase the ordered goods (contract offer). SELVE is entitled to accept this contract offer within two weeks after the day of receipt of the offer by SELVE. Acceptance may be stated either expressly in writing or in text form or by delivery of the ordered goods. In case of email correspondence, the mere confirmation of receipt of the order does not yet amount to a mandatory declaration of acceptance, unless acceptance is expressly confirmed in the confirmation of receipt.

3.3. The conclusion of the contract is contingent on the proper and timely delivery by upstream suppliers to SELVE. This applies only to the case where SELVE is not responsible for non-delivery. SELVE shall in particular not be responsible for non-delivery, if they have concluded a proper congruent substitute transaction.

4. Pricing, price adjustment, shipping costs, packaging costs, partial delivery

4.1. Prices stated in the offer are, unless expressly stated otherwise, in EURO excl. statutory VAT applicable at the time of delivery.

4.2. If more than four months have lapsed between conclusion of the contract and delivery, we reserve the right to adjust our prices due to unforeseen increases in primary material or wages. If the customer does not concur with such price adjustments, both parties are entitled to withdraw from the contract.

4.3. Confirmed prices of an order are under no circumstances not binding for subsequent orders of similar products.

4.4. Products are delivered only in complete packaging units as offered in our catalogue. If partial lots are delivered, a surcharge for small quantities of EUR 5,00 per item is, provided that the total order value is less than EUR 150,00.

4.5. Prices quoted are exclusive of insurance and transport packaging. SELVE ships the good free of freight costs if the value of the shipment (net without VAT and billed supplemental charges) is at least EUR 2,500.00. In case of package shipping, this value is reduced to EUR 500.00. For octagonal steel shafts, the threshold for free of charge shipping is the minimum quantity of 3,000 m per delivery. If the scope of the order is less than the threshold, the customer shall bear the shipping costs.

4.6. We will not charge for or take back one-way packaging, unless we are so obliged in terms of the Packaging Ordinance (Verpackungsordnung). Reusable transport packaging will be charged at replacement value. If the customer returns the packaging in proper, reusable condition and freight prepaid, the charged amount will be credited to the account of the customer.

4.7. SELVE is entitled to make partial deliveries to a reasonable extent without prior consultation.

5. Payment Terms

5.1. Unless otherwise agreed, our invoices are payable within 30 days without any deductions. The deadline begins to run on the date of the invoice.

5.2. The customer is under the contractual obligation to pay the purchase price within 30 days after receipt of the goods. If payment is not made during this period, the customer shall be in default of payment. Notwithstanding any terms to the contrary of the customer, SELVE shall be entitled to use payments to first settle older outstanding debts of the customer. If costs and interest have already accrued, SELVE shall be entitled to set-off the payment first against the costs, then against the interest and finally against the principal claim.

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5.3. A payment is considered made only if SELVE can dispose of the amount. In case of payment by securities, the acceptance of which SELVE reserves on a case-by-case base, payment shall be made only if the security is redeemed. The related costs and fees shall be borne by the customer.

5.4. Pursuant to Section 247 of the German Civil Code (BGB), the customer shall pay interest at the rate of 8 % above the base interest rate on outstanding payments. SELVE expressly reserves the right to assert claims for further damage to be proven specifically in each instance.

5.5. If a customer does not meet his payment obligations, in particular does not honour a check or a bill of exchange, or cease payments, or if SELVE becomes aware, after conclusion of the contract, of other circumstances that have a negative impact on the customer's creditworthiness to an extent that is significant for the business relationship, SELVE shall be entitled to demand payment of the entire residual amount due, notwithstanding any payment terms previously granted by SELVE or if SELVE has accepted checks or bills of exchange. In this case, SELVE is furthermore entitled to demand prepayment or security.

5.6. The customer shall be entitled to exercise of a right of retention only if the customer's counterclaim is based on the same legal relationship.

6. Delivery terms, delivery delays, self-supply

6.1. For evidentiary purposes, delivery dates or delivery period must be agreed at least in text form. Delivery periods commence on the date on which the agreement is concluded. They do not commence until all details of the performance have been clarified. If delivery has been agreed according to the planning records of the customer, the delivery periods do not commence the complete planning records have been handed over.

6.2. Compliance with the delivery periods is contingent on fulfilment of the contractual obligations and duties by the customer.

6.3. SELVE shall not be held liable for delays in delivery and performance due to force majeure and due to events, which render our delivery substantially more difficult or impossible (these circumstances include, for example, strikes, lockouts, official orders, etc.), even if these circumstance occur with suppliers of SELVE or their sub-suppliers. These circumstances entitle SELVE to postpone the delivery or performance for the duration of the obstruction plus a reasonable period start-up period or to cancel the contract in total or in part in regard to the part not yet performed.

6.4. If the obstruction lasts for a period of more than two calendar months, the customer is entitled, after setting a reasonable period of grace, to cancel the contract in regard to the part not yet performed. The customer shall not be entitled to any damages, if the delivery period is extended or if SELVE is released from its obligation.

6.5. SELVE shall only be entitled to rely on the circumstances referred to in paras. 6.3. and 6.4. if SELVE informs the customer without undue delay of the occurrence of these events.

6.6. If an agreed fixed delivery date has not been observed, the customer may assert claims for damages or withdraw from the contract only after the fruitless expiry of a reasonable grace period set by the customer. If the customer asserts a claim for damages in this case, SELVE's liability in regard to claims for compensation of any damage shall be limited to a substitute transaction. Any further damage shall only be compensated to the extent of the contract sum. This limitation shall not apply to fixed date transactions that are specifically designated as such and to cases where the damage is caused by intent or gross negligence of executive staff of SELVE.

6.7. If SELVE does not receive delivery from its downstream suppliers for reasons that do not fall within the sphere of SELVE, SELVE as well as the customer are entitled to withdraw from the contract.

7. Delivery quantities, supply contracts on demand

7.1. Delivery of octagon steel shafts are delivered in the factory lengths of 6 m or at fixed lengths according to the packaging unit (PU = bundle) according to the respective effective SELVE catalogue. Any resulting excess or short deliveries of full bundles shall be deemed to be proper contractual delivery.

7.2. In case of contracts for continuous supply on demand, SELVE shall be entitled to produce the total volume of the order according to their production planning at any time during the contract term, unless express agreements to the contrary have been made. Once the total quantity has been produced, it is no longer possible to make any changes to the ordered goods.

7.3. The customer is under the contractual obligation to schedule the ordered quantity into lots within a period of three months after conclusion of the contract and to accept is according to the subdivision. If the customer does not comply with the obligation to schedule the ordered quantity in time, SELVE shall be entitled to set a reasonable period for such scheduling. Upon the fruitless expiry of this period, SELVE shall be entitled to demand acceptance and payment of the residual quantity.

7.4. In case of contracts on demand that span a period of more than four months, a reasonable adjustment of the price in the event of unforeseen cost or quantity developments during the supply contract on demand is deemed to have been agreed. The agreed prices may not be changed for any other reason, in particular not if a lower competitive offer has been made.

8. Transfer of risk, acceptance

8.1. Shipment and transport shall always be at the risk of the customer. Even in the case of partial deliveries, the risk shall pass to the customer, as soon as the consignment has been handed over to the person/forwarding agent carrying the transport resp. as soon as the shipment has left our warehouse/production plant. If shipment of the delivery is delayed or is rendered impossible for reasons not attributable to SELVE, the risk of accidental deterioration and accidental loss shall

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pass to the Customer upon notification of readiness for shipment by SELVE. Storage costs incurred by SELVE as a result thereof after a transfer of risk, shall be borne by the customer. SELVE is entitled to charge 1 % of the gross order amount per month in such a case. Further claims shall remain unaffected thereby.

8.2. If the parties have agreed that the goods shall be inspected according to special terms or that a formal acceptance of the goods shall take place, the inspection or acceptance shall take place at the supplying plant of SELVE. All costs of acceptance, travel and accommodation costs of the customer shall be borne by the latter. If the customer abstains from an agreed acceptance, the goods shall be deemed to have been accepted at the time of transfer of risk.

9. Notice of defects, warranty, return of goods

9.1. SELVE assumes warranty in accordance with the following provisions, which exhaustively governs SELVE's liability under the warranty and does not represent a guarantee in the legal sense. In case of commercial goods, any guarantees of manufacturers remain unaffected by these provisions.

9.2. If SELVE's technical data sheets or installation instructions are not heeded, or if changes are made to the products, the warranty and liability for defects shall lapse. The same applies to defects in end products manufactured by the customer using SELVE products, if these goods are produced using construction parts, metal fittings and accessories of other manufacturers. These limitations do not apply if the customer can prove that the claimed defect is not based on these circumstances.

9.3. The customer is obliged to notify SELVE of obvious defects in text form without undue delay, at the latest, however, within eight calendar days after receipt of the delivery item; the notification must include a detailed description of the defect. Defects that cannot be detected even with careful inspection within this period must be reported to us in text form without undue delay after their discovery; such notification must include a detailed

description of the defect. In case of failure to comply with these provisions, the goods shall be deemed to have been accepted. The customer bears the full onus of proof for all qualifying conditions for the claims, in particular for the defect itself, for the time of detecting the defect and for the timeliness of the notice of defect.

9.4. In derogation from Article 46 of the Convention, we shall be entitled, if the goods do not conform to the contract, to provide a replacement instead of repairing the goods. In this case, the customer shall make the non-conforming goods available to us at our expense.

9.5. We shall be obliged to provide compensation for non-conforming goods only if the non-conformity is based on fault on our part. Any claim for damages is limited to EUR 50.000,00.

9.6. Unless expressly otherwise agreed, the contractual conformity of SELVE Products shall be determined solely on the basis of the SELVE product description in the generally accessible technical sales documents of SELVE and - if applicable - the acceptance drawing signed by the customer. Acceptance samples merely serve to verify the acceptance drawing; the sample does not serve to define the quality of the goods. Public statements, promotions, advertising and application examples in our promotional materials likewise do not amount to a contractual quality description of the goods.

9.7. Only the immediate contracting partner of SELVE shall be entitled to warranty claims against us; such claims are non-transferable.

9.8. SELVE has implemented a quality management system certified according to DIN EN ISO 9001. All products are continuously checked in accordance with our quality manual during production. Further tests than those defined in our quality manual require a separate written agreement between the customer and SELVE; such agreement must also specify in precise detail the test parameters and test methods.

9.9. The SELVE quality management system does not absolve the customer from the need for a proper inspection of incoming goods.

9.10. All claims of the customer based on non-conformity of the goods shall become time-barred after 12 months, starting with the day of the timely complaint pursuant to para. 9.3., but no later than 24 months after delivery of the goods concerned.

9.11. Goods that are returned for reasons other than being defective, shall be accepted by SELVE only after prior written consent and provided that the goods are not older than 6 months. The costs for returning the goods shall be borne by the customer. SELVE will credit the customer for the returned goods for the initial purchase prices, less a standard industry discount of 25 %, but at least EUR 50,00, as compensation for the inspection of incoming goods, storage and commercial handling. The customer is entitled to provide evidence of lower costs.

10. Retention of title

10.1. SELVE retains title to the goods delivered until full settlement of all liabilities arising from the business relationship, including interest and cost. At the request of SELVE, the customer is obliged to provide special storage and insurance for the goods delivered subject to retention of title; at our request, the customer shall provide proof of compliance with such obligation.

10.2. Until further notice by SELVE, the customer is entitled to dispose of or process the goods delivered subject to retention of title in the ordinary course of business.

11. Proprietary rights, copyright

Records and drawings provided to the customer, as well as designs and proposals for the configuration and production of shutter or sun protection systems provided by SELVE may be used by the customer solely for the agreed purpose. The customer may not make these records or drawing available to third parties or use them for publications without our consent.

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12. Confidentiality

Both the customer and SELVE are obliged to treat all non-obvious commercial and technical details of the other party of which they become aware in the course of the business relationship as a trade secret. Drawings, models, patterns, samples and similar objects may be not made available or otherwise accessible to third parties. The reproduction of such items is permitted only in the context of operational requirements and the confines of copyright.

13. Data protection

A data processing system will be used to manage the business relationship. Accordingly the customer data (address, delivery products, quantities, prices, payments, cancellations, etc.) will be collected in an automated file and stored within the temporal limits of the statutory retention requirements. The customer is hereby informed of this data storage. Legal basis: Sections 27 et seqq, Section 33 of the German Federal Data Protection Act (BDSG).

14. Place of performance/jurisdiction

Place of performance is Lüdenscheid. The place of jurisdiction for all disputes arising out of or in connection with this contract - including for actions on bills of exchange - shall be the court with jurisdictional competence for Lüdenscheid. The right of each party to sue.