

General Sales and Delivery Conditions

I. Preamble

These Standard Terms and Conditions for the Sale of Export Goods shall exclusively apply, save as varied by express agreement accepted in writing by both parties.

The offer, order acknowledgment, order acceptance or sale of any products cover herein is conditioned upon the terms contained in this instrument. Any conditional different terms proposed by the buyer are objected to and will not be binding upon the seller unless assented in writing by the seller.

These conditions shall govern any future individual contract of sale between the seller and the buyer to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the buyer.

Any typographical, clerical or other error or omission in any sales literature, quotation price list, acceptance of offer, invoice or other document of information issued by the seller shall be subject to correction without any liability on the part of the seller.

The provisions of these Standard Terms and Conditions extend to Standard contract conditions which are used in a contract with a merchant in the course of business only.

II. Orders and Specifications

No order submitted by the buyer shall be deemed to be accepted by the seller unless and until confirmed in writing by the seller or the seller's representative within 21 days after submittal.

The quantity, quality and description of and any specification for the goods shall be those set out in the seller's quotation (if accepted by the buyer) or the buyer's order if accepted by the seller. Any such specification, sales literature, quotation etc. shall be strictly confidential and must not be made available to third parties.

The buyer shall be responsible for the seller for ensuring the accuracy of the terms of any order submitted by the buyer, and for giving the seller any necessary information relating to the goods within a sufficient time to enable the seller to perform the contract in accordance with its terms.

If the goods are to be manufactured or any process is to be applied to the goods by the seller in accordance with a specification submitted by the buyer, the buyer shall indemnify the seller against all loss, damages, costs and expenses awarded against or incurred by the seller in connection with or paid or agreed to be paid by the seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual rights of any other person which results from the seller's use of the buyer's specification.

The seller reserves the right to make any changes in the specification of the goods which are required to conform with any applicable statutory requirements or, where the goods are to be supplied to the seller's specification, which do not materially affect their quality of performance.

III. Price the Goods

The price of the goods shall be the seller's quoted price or, where no price has been quoted, the price listed in the seller's published price list current at the date of acceptance of the order.

The seller reserves the right, by giving notice to the buyer at any time before delivery, to increase the price of the goods to reflect increase in the cost to the seller which is due to any factor beyond the control of the seller (such as foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of materials or other costs of manufacture) or any change in delivery dates.

Except as otherwise stated under the terms of any quotation or in any price list of the seller, and unless otherwise agreed in writing between the buyer and the seller, all prices are given by the seller on an ex works basis, and where the seller agrees to deliver the Goods otherwise than at the seller's premises, the buyer shall be liable to pay the seller's charges for transport, packaging and insurance.

The price is exclusive of any applicable value added tax, which the buyer shall be additionally liable to pay to the seller.

IV. Terms of Payment

The buyer shall pay the price of the goods immediately after receiving the seller's invoice, except other agreement between the parties of this contract.

Payment shall be effected by interbank payment transaction only; no cheque or bill of exchange will be considered as fulfillment of the payment obligation. It may be agreed between the parties that the buyer has to deliver a letter of credit issued by his bank (or any bank acceptable to the seller). In this individual case it is assumed that any letter of credit will be issued in accordance with the Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No.500.

If the buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the seller, the seller shall at his discretion be entitled to:

- cancel the contract or suspend any further deliveries to the purchaser; or
- charge the buyer interest on the amount unpaid, at the rate of 8 per cent per annum above Bundesbank Discount Rate from then being valid, until payment in full is made. The buyer shall be entitled to prove that the delay of payment caused no or little damage only.

V. Delivery

Delivery of the goods shall be made by the buyer collecting the goods at the seller's premises at any time after the seller has notified the buyer that the goods are ready for collection or, if some other place for delivery is agreed, by the seller delivering the goods to that place.

If a fixed time for delivery is provided for in the Contract, and the seller fails to deliver within such time or any extension thereof granted, the buyer shall be entitled, on giving to the seller within a reasonable time notice in writing, to claim a reduction of 0.5% per week of the price payable under the contract, unless it can be reasonably concluded from the circumstances of the particular case that the buyer has suffered no loss. This limit shall not apply if the business had to be settled on a fixed date or if the delay was caused negligently or intentionally by the seller, his agents or representatives or if there is any further breach of any essential contractual obligation.

If for any reason whatever the seller fails within such time of effect delivery, the buyer shall be entitled by notice in writing to the seller to fix a deadline after the expiry of which the buyer shall be entitled to terminate the contract. He may also recover from the seller any loss suffered by the buyer by reason of the failure of the seller. Damages may only be claimed for by the buyer if the seller (or his representatives) intentionally or negligently ("gross negligence") failed to fulfill the contract. The seller shall nevertheless be held responsible for not fulfilling any further essential contractual obligation.

If the buyer fails to accept delivery on due date, he shall nevertheless make any payment conditional on delivery as if the goods had been delivered. The seller shall arrange for the storage of the goods at the risk and cost of the buyer. If required by the buyer the seller shall insure the goods at the cost of the buyer.

VI. Transfer of Risks

Risk of damage to or loss of the goods shall pass to the buyer as follows:

- in the case of goods to be delivered otherwise than at the seller's premises, at the time of delivery or, if the buyer wrongfully fails to take delivery of the goods, the time when the seller has tendered delivery of the goods;
- in the case of goods to be delivered at the seller's premises („ex works“, Incoterms) at that time when the seller notifies the buyer that the goods are available for collection.

VII. Retention of Title

Notwithstanding delivery and the passing of risk in the goods, or any other provision of these conditions, the property in the goods shall not pass to the buyer until the seller has received payment in full of the price of the goods and all other goods agreed to be sold by the seller to the buyer for which payment is then due.

The seller shall have absolute authority to retake, sell or otherwise deal with or dispose of all or any part of the goods in which title remains vested in the seller; Until such time as the property in the goods passes to the buyer, the buyer shall hold the goods as the seller's fiduciary agent, and shall keep the goods properly stored, protected and insured.

Until that time the buyer shall be entitled to resell or use the goods in the ordinary course of its business, but shall account to the seller for the proceeds of sale or otherwise the goods including insurance proceeds, and shall keep all such proceeds separate from any moneys or properties of the buyer and third parties. If the Goods are processed or reshaped by the buyer and if processing is done with goods that seller has no property in, seller shall become co-owner of the goods. The same shall apply if seller's goods are completely reshaped and mixed with other goods. If third parties take up steps to pledge to otherwise dispose of the goods, the buyer shall immediately notify the seller in order to enable the seller to seek a court injunction in accordance with § 771 of the German Code of Civil Procedure. If the buyer fails to do in due time he will be held liable for any damages caused. The seller shall on demand of the buyer release any part of the collateral if the value of the collateral held in favor of the seller exceeds the value of the claims being secured. It is to the seller's decision to release those parts of the collateral suitable for him.

VIII. Liability for defects and other breaches of duty

The seller accepts no warranty of any kind unless the latter has been confirmed expressly in writing to the buyer.

The seller accepts liability for the delivery as follows, under exclusion of further Claims:

The goods must be inspected by the buyer immediately upon receipt. Any defects detected must be communicated in writing to the seller without delay. Claims asserted against members of the field sales force or transporters or other third parties do not represent claims in due form or in due time.

Existence of a defect that has been assessed as such and communicated by means of an effective notification of defects constitutes the following rights for the buyer:

In the case of defectiveness the buyer is first of all entitled to demand correct delivery by the seller.

It lies in the seller's discretion as to whether the product is to be replaced or the defects repaired. In addition, if the substitute delivery should fail, he has the right to supply a further substitute delivery, again at his own discretion. If this repeated substitute delivery also fails, the buyer is entitled to withdraw from the contract or demand a reduction in the purchase price.

Only in cases of gross negligence or intentional breach of duty to supply goods free of defects is the buyer entitled to demand compensation or substitution of futile expenditure. He is obliged to give evidence of the reason and amount of damage. The same applies to futile expenditure.

The warranty period for new and used goods is one year from the date of delivery. In every case the buyer must prove that the defect already existed at the time of delivery.

In particular no warranty extends to the following cases:

- the seller shall not be liable in respect of any defect in the goods arising from any design or specification supplied by the buyer;

- the above warranty does not extend to parts, materials or equipment manufactured by or on behalf of the buyer unless such warranty is given by the manufacturer to the seller,

- no warranty can be granted in cases of inappropriate or improper use, faulty installation or operation by the buyer or third parties, natural wear, faulty or neglectful treatment, incorrect maintenance, unsuitable operating materials, defective construction work, unsuitable foundations, chemical, electrochemical or electrical influences - unless these are attributable to the seller.

The seller shall not be liable for the consequences of improper repair attempts by the buyer or a third party. The same applies to changes made to the delivered goods.

If substitute goods are delivered, the parts replaced become the property of the seller.

If the use of the goods leads to a breach of commercial trademark rights or Copyrights in the home country (Germany), the following rules apply:

The seller in this case assures the buyer the right to continued use at his own cost or modifies the delivered goods in a way acceptable for the buyer so that the trademark rights are no longer violated. If this is not possible at economically appropriate conditions or within an appropriate period, the buyer is entitled to withdraw from the contract. Under the conditions stated, the seller also has the right to withdraw from the contract. Furthermore the seller shall indemnify the buyer from undisputed or legally established Claims of the owner of the said trademark rights.

These obligations extend only when the buyer informs the seller immediately of violation of trademark rights or Copyrights and the buyer supports the seller appropriately in defence of the Claims to be asserted or facilitates execution of the necessary modifications.

Claims by the buyer regarding violation of commercial trademark rights or Copyrights are only valid if the buyer retains the right to all defence measures including extra judicial rulings and if the defect of title is not based on an instruction by the buyer and the breach of law is not caused by the buyer having changed the delivered goods on his own authority or having used them in a manner contrary to the contract.

Liability for other breaches of duty

The buyer shall grant the seller an appropriate period for the elimination of any other than the above mentioned breaches of duty, not less than 3 weeks, after which time he is entitled to withdraw from the contract. The buyer is entitled to withdraw from the contract without appointment of a date if it is finally impossible for the buyer to complete his service prior to passing of risk. Furthermore the buyer is entitled to withdraw from the contract if, at the time of an order, completion of part of the delivery is impossible and he has a justified interest in rejecting partial delivery. If this is not the case, the buyer shall pay the contractual price for the partial delivery. The same applies if the seller is not in a position to complete the delivery.

If the buyer is solely or largely responsible for the circumstances that would justify his withdrawal, or if the circumstance justifying withdrawal has occurred during the acceptance delay caused by the buyer, withdrawal is ruled out.

The seller renders compensation only in cases of severe negligence or deliberate breach of duty. Compensation instead of goods in the case of non-fulfillment and of damage caused by delay is limited to the negative interest; compensation in the case of goods/services not supplied or not supplied as owed is limited to the amount of the agreed payment. Compensation instead of goods/services is ruled out when liability is excluded (impossibility).

IX. Miscellaneous Clauses

The seller reserves the right to improve or modify any of the products without prior notice, provided that such improvement or modification shall not affect the form and function of the product.

This agreement supersedes and invalidates all other commitment and warranties relating to the subject matter hereof which may have been made by the parties either orally or in writing prior the date hereof, and which shall become null and void from the date of the agreement is signed.

This agreement shall not be assigned or transferred by either party except with the written consent of the other.

Each party shall be responsible for all its legal, accountancy or other costs and expenses incurred in the performance of its Obligation hereunder.

X. Choice of Law; Place of Jurisdiction

This agreement shall be governed by and construed in accordance with German law and each party agrees to submit to the Jurisdiction of the courts having jurisdiction for the seller.

The seller shall have the right to bring a claim before a court at the buyer's principal place of business or at his discretion before any other court being competent according to national or international law.