

TERMS AND CONDITIONS

1. Preamble

These Standard Terms und 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 of sale of any products covered herein is conditioned upon the terms contained in this instrument. Any conditional or different terms proposed by the buyer are objected to and will not be binding upon the seller unless assented in writing by 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 and 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 Standards Terms and Conditions extend to standard contract conditions which are used in a contract with a merchant in the course of business only.

2. 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 10 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 accorded against or incurred by the seller in connection with or 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 or performance.

3. Price of 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. Where the Goods are supplied for export from Germany, the seller's published export price list shall apply.

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 (Incoterms 2000) 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.

4. Terms of Payment

The buyer shall pay the price of the goods before delivery. Payment shall be effected by interbank payment transaction only; no cheque or bill of exchange will be considered as fulfilment of the payment obligations.

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 European Central Bank reference 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.

5. 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, by the seller delivering the Goods to that place.

Where delivery of the Goods is to be made by the seller in bulk, the seller reserves the right to deliver up to 3 % more or 3 % less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be in the quantity ordered.

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 3 % 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 failure of the seller. Damages may only be claimed for by the buyer if the seller (or his representatives) intentionally or negligently failed to fulfil the contract. The seller shall nevertheless be held responsible for not fulfilling any further essential contractual obligations.

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 the cost of the buyer. If required by the buyer the seller shall insure the Goods at the cost of the buyer.

6. Transfer of Risks

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

- in 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 the goods to be delivered at the seller's premises ("ex works", Incoterms 2000) at the time when the Goods are handed over to the buyer's carrier.

7. 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 of 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.

The seller shall on demand of the buyer release any part of the collateral if the value of the collateral held in favour 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.

8. Warranties and Exclusion Clauses, product returns

The seller warrants that all items delivered under this agreement will be free from defects in material and workmanship, conform to applicable specifications, and, to the extent that detailed designs have not been furnished by the buyer, will be free from design defects and suitable for the purposes intended by the buyer.

The seller shall not be liable for the Goods being fit for a particular purpose unless otherwise agreed upon, to which the buyer intends to put them.

The above warranty is given by the seller subject to the following conditions:

- 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 seller shall not be liable under the above warranty if the total price for the goods has not been paid by the due date for payment;
- 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.

This warranty does not cover defects in or damage to the products which are due to improper installations or maintenance, misuse, neglect or any cause other than ordinary commercial application.

Any discharge from liability will be void if a defect results from a negligent or intentional breach of contract on the part of the seller. The same applies if the seller may be held responsible for the breach of any further essential contractual obligation.

Inspection and acceptance of the Goods shall be Buyer's responsibility. Buyer is deemed to have accepted the Goods unless written notice of rejection is received by Seller within ten days after delivery of the Goods. Buyer waives any right to revoke acceptance thereafter. Buyer shall report any discrepancy in shipment quantity or damage within ten days after delivery.

Any claim by the buyer which is based on any defect in the quality or condition of the goods or their failure to correspond with specification shall be notified to the seller within three months from the date of delivery.

The buyer is entitled to demand the delivery of any substitute Goods, or repair or a reduction of the purchase price as set forth with the terms of each individual contract of sale.

Where any valid claim in respect of any Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the seller in accordance with these Conditions, the seller shall be entitled at the seller's sole discretion to either replace the Goods free of charge or repair the goods. If the seller is neither ready nor able to either repair or replace the goods the buyer shall be entitled at the buyer's sole discretion to claim for a reduction of price or the cancellation of the contract.

Returned Goods must be in original manufacturer's shipping cartons complete with all packing materials. All Goods for return shall be returned freight prepaid. If returned Goods are claimed to be defective, a complete description of the nature of the defect must be included with the returned Goods. Where any claim in respect of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is valid, the prepaid freight for returning the Goods to the Seller shall be compensated/credited to the Buyer. Goods not eligible for return shall be returned to Buyer, freight collect.

9. 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.

10. Choice of Law; Place of Jurisdiction

This Agreement shall not be altered or modified, unless in writing and signed by the parties hereto.

If any term or condition of this Agreement is null and void or will become null and void during its course, then the validity and effectiveness of all other terms and conditions shall not be impaired thereby. All terms and conditions of this Agreement are separable.

This Agreement shall be governed by and construed in accordance with German Law and excluding the United Nations Convention on Contracts for the International Sale of Goods; each party agrees to submit to the jurisdiction of the courts having jurisdiction for the Principal.

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 any national or international law.