

General Terms and Conditions of Delivery for the Customer/Principal

1. Application

Unless explicitly amended by the parties in written agreement, these Standard Conditions for the Sale of Export Goods apply exclusively.

The proposal, proposal acceptance, order confirmation or sale of any product is subject to these conditions. Any conditions or provisions of Buyer changing the contract are contradicted; they shall only be effective for Vendor if Vendor approves these changes in writing.

These provisions form the basis for any and every future individual purchase transaction between Buyer and Vendor and they exclude any other agreement whatsoever.

Vendor may correct any errors in sales prospectuses, pricelists, proposal documents or other documentation of Vendor without the possibility of recourse to Vendor for damages due to said errors.

These General Terms and Conditions of Sale only apply with regard to merchants. They apply for Buyers domiciled outside the EU.

2. Order and proposal documents

Orders submitted by Buyer are only then deemed as accepted by Vendor if Vendor or his representative / agent accepts them in writing within 21 days after they are submitted.

Quantity, quality and description and any specifications of the goods match the proposal of Vendor. All sale documents, specifications and pricelists must be treated as strictly confidential and may not be made accessible to third parties.

Customer is responsible for the accuracy of the order and Customer is responsible for providing to Vendor all necessary information concerning the ordered goods within an appropriate period of time so that the order may be executed contractually.

If Vendor must manufacture or otherwise rework or process the goods and if Customer has submitted a specification for this, then Customer must indemnify Supplier against all loss, damage, costs or other expenditure which Supplier must or is willing to pay because the contractual processing or reworking of the goods in accordance with the specification of Customer has turned out to be a breach of a patent, copyright, trademark or other protected right

Vendor reserves the right to change the goods description with regard to the specification to that extent necessary in order to comply with statutory necessities inasmuch as these changes do not impair the order in terms of quality and usability.

3. Purchase price

The purchase price shall be the price quoted by Vendor or, if this does not happen in the individual case, the price stated in the current pricelists of Vendor as in the version valid at the time of the order.

Unless stated otherwise in the proposal or in the selling pricelists or agreed otherwise in writing between the Parties, all prices are stated by Vendor as "ex-works". If Vendor is prepared to deliver the goods at other places, then Buyer must assume the costs for transport, packaging and insurance.

4. Conditions of payment

Buyer must pay the purchase price within 30 days after receiving the invoice.

Payments should only be made by bank account transfer; payments by bills of exchange and cheques are not acknowledged as fulfilment of the payment obligation.

It can be agreed between the contract parties that the Buyer must open a documentary credit at his bank (or another bank acceptable to Vendor). It is stipulated in this individual case that the documentary credit shall be opened in accordance with the General Directives and Customs for Documentary Credits, Revision 1997, ICC Publication No. 600.

If Buyer has not fulfilled his payment obligation by the maturity date, then Vendor may – without stating any possible further rights to which he is entitled – charge Buyer interest on the unpaid amount and which will be 8% p.a. over the respective basic lending rate of the ECB until payment is finally and fully made.

Furthermore, Vendor has the right at his own discretion to

- suspend further deliveries to Buyer, or
- terminate the contract.

Buyer is entitled to evidence that no or lesser damage was incurred due to the payment default.

5. Goods delivery

The goods shall be delivered such that Buyer accepts the goods at any time on the business premises of Vendor as soon as Vendor has notified to Buyer that the goods are ready to be collected or by delivery to another place of delivery if such a place has been agreed with Vendor.

In the case of delivery of bulk goods, Vendor may deliver up to 3% more or less of the goods quantity without having to adjust his purchase price and it is agreed that the quantity of goods so delivered shall be deemed to be contractually conform.

Inasmuch as a concrete delivery time was agreed in the contract and if Vendor does not deliver within the agreed (or prolonged) delivery time, then following prior written notice Buyer may assert a price rebate of 0.5% per week (up to a maximum of 5%) on the purchase price unless it is recognisable from the circumstances of the case in question that Buyer has not suffered any disadvantage. This limitation does not apply if a fixed transaction between merchants was agreed, if the default is due to wilful conduct or gross negligence of Supplier, his representatives or vicarious agents or if Vendor breached any other essential contract duty.

If Vendor does not deliver on time, then Buyer must set Vendor a subsequent period in writing to perform and after expiry of which Buyer may terminate the contract. Buyer can demand damage compensation instead of performance.

Buyer must nevertheless pay the purchase price if he is in default with acceptance on the maturity date. In these cases Vendor will undertake storage at the risk and cost of Buyer. If Buyer so wishes, Vendor will insure the goods at the cost of Buyer.

6. Passage of risk

The risk of damage or loss of the goods passes to Buyer as follows:

- in the case that the goods are not delivered on the business premises of Vendor, risk passes at the point in time of handover to the freight carrier or, if Buyer is in default with acceptance, then at the point in time at which Vendor offers the handover.
- In the case that the goods are delivered on the business premises of Vendor ("ex-works", Incoterms 2010), risk passes at the point in time at which Vendor informs Buyer that the goods are ready for collection.

7. Retention of title

Irrespective of delivery and passage of risk or other provisions of these Terms and Conditions of Delivery, title to the goods shall not pass to Buyer before the entire purchase price has been paid.

Following any withdrawal from the contract, Vendor has the right to demand that the goods be surrendered, to sell them elsewhere or dispose over them in any other manner.

For as long as the goods are not fully paid for, Buyer must keep the goods in trust for Vendor and keep the goods separated from his own property and that of third parties and must store, secure and insure the conditional goods properly and label them as being the property of Vendor.

Until full payment, Buyer may use or resell the goods in usual business operations, but he must collect any remuneration whatsoever (including any insurance payments) for Vendor and hold the funds separately from his own assets and assets of third parties.

If the goods are further processed and if the further processing is done with parts in which Vendor has no title, then Vendor acquires corresponding co-ownership. The same shall apply if goods of Vendor are commingled with goods of another party.

Buyer must notify attachments or other interventions by third parties to Vendor immediately so that Vendor can bring legal action. Buyer shall be liable for damages caused because he failed to fulfil this obligation.

Vendor commits to release collateral to which he is entitled on demand by Buyer inasmuch as the realisable value of the collateral exceeds the receivables to which Vendor is entitled. Vendor shall decide which collateral is to be released.

8. Liability for deficiencies

Customer is obligated to inspect the delivered goods immediately on delivery and to notify existing deficiencies to Vendor promptly in writing (but no later than before expiry of 5 working days following delivery). Deficiencies complained late, i.e. in contravention of the aforesaid duty, shall not be considered and are excluded from warranty. Deficiency complaints are only acknowledged if they are notified in writing. Complaints asserted toward sales organisation employees or third parties do not constitute proper complaints in terms of form and due time.

Customer is obligated to provide the complained delivery or parts of it to Vendor for examining the complaint. The warranty is void if Customer culpably refuses.

The provisions governing delivery periods and times apply correspondingly if subsequent improvement or replacement delivery is performed due to a justified deficiency complaint.

Customer has the following rights in the case of a deficiency determined as such and reported by effective deficiency notice:

In the event of a deficiency, Customer initially has the right to demand subsequent fulfilment. Vendor has the right to decide at his own dutiful discretion between a new delivery of the item and remedy of the deficiency.

Furthermore, if one subsequent fulfilment attempt fails Vendor has the right to attempt subsequent fulfilment again at his own dutiful discretion. Customer first has the right to withdraw from the contract or to reduction if the repeated subsequent fulfilment also fails.

In no case does Vendor warrant that the goods are suitable to be used for a specific purpose. The item is deemed to be free of deficiencies if it corresponds to the technical specifications.

The warranty period is one year as from delivery dispatch. In every case Customer must evidence that the deficiency already existed before delivery dispatch.

Vendor is not liable for natural wear and tear.

In the event of deficiencies in construction components of other manufacturers which Vendor cannot remedy due to license rights or factual reasons, Vendor shall at his own discretion either assert his warranty claims against the manufacturers and suppliers for account of Customer or assign these claims to Customer. Warranty claims against Vendor only exist for such deficiencies under the other prerequisites and pursuant to these General Terms and Conditions of Delivery if the enforcement of the aforesaid claims against the manufacturers and suppliers before a court of law was unsuccessful or is without prospects of success, for instance due to insolvency. The statutory limitation period of the warranty claims in question which Customer has against Vendor is suspended for the duration of the litigation.

9. Fault-based liability for damages

Liability for damage compensation, on whatever legal grounds, especially from impossibility, default, defective or erroneous delivery, breach of contract, breach of duties in contract negotiations and illicit acts, is limited in accordance with this § 8 inasmuch as this is respectively founded in a fault.

Vendor shall not be liable

- (a) in the case of minor negligence of his organs, lawful representatives, employees or other vicarious agents;
- (b) in the case of gross negligence on the part of his non-managerial employees or other vicarious agents

inasmuch as the matter does not concern a breach of essential contract duties.

Inasmuch as Vendor is liable for damages on the grounds of cause, then this liability shall be limited to those damages Vendor foresaw at contract conclusion as possible consequence of a breach of contract or must have foreseen considering the circumstances known to him or which he must have known under the due care and diligence usual in business. Indirect damage and consequential damage resulting from deficiencies of the delivery item are moreover only eligible for compensation if such damages must be typically anticipated in using the delivery item for its intended purpose.

In the event of liability for minor negligence, the obligation of Vendor to compensate damage to property or injury to persons is limited to EUR 50,000.00 per damage occurrence, even if the matter concerns a breach of essential contract duties.

The foregoing liability exclusions and limitations apply in the same scope in favour of the organs, lawful representatives, employees and other vicarious agents of Vendor.

Inasmuch as Vendor gives technical information or consulting and this information or consultancy does not pertain to the contractually agreed performance scope owed, then said information and consulting is given gratuitously and under exclusion of all liability.

The restrictions of this paragraph do not apply to liability due to wilful conduct, guaranteed characteristics, due to injury to life, limb or health or due to product liability law.

10. Other provisions

Vendor is entitled to change or improve the goods without having to inform Buyer of this beforehand inasmuch as changes or improvements do not lastingly encumber or deteriorate the form or functioning of the goods.

These terms and conditions supersede all other agreements which the contract parties have concluded in writing or verbally and which become null and void with signing of these terms and conditions.

These terms and conditions shall not be disclosed to any third party without the written consent of the other contract parties.

Each contract party itself assumes the costs of executing this agreement.

11. Jurisdiction/Choice of law

All contentions arising from or in connection with the contracts shall be adjudicated in accordance with the Rules of Arbitration of the ICC Court of Arbitration in Geneva/Switzerland.

The court of arbitration consists of three arbitration judges. The presiding chairperson must be a lawyer accredited at the ICC Courts of Arbitration and who commands the arbitration language.

The court is domiciled in Geneva/ Switzerland.

Arbitration language is German.

The Court of Arbitration shall apply UN commercial law (CISG) as substantive law. The Court of Arbitration shall proceed in accordance with the Rules of Arbitration of the International Chamber of Commerce.

Instead of appealing to the Court of Arbitration, Vendor is also entitled to bring suit before a materially and locally responsible court of law of his choice.