

Terms of Delivery and Payment

0. General provisions

The terms of delivery and payment specified hereafter shall become effective immediately for all supplies and services delivered, unless expressly stipulated otherwise in writing. Our terms are exclusive, any other terms stated by the purchaser are void. The application of the Uniform Law on the International Sales of Goods (ULIS) and the United Nations Convention on Contracts for the International Sales of Goods (CISG) are excluded.

1. Offers and Prices

All offers are noncommittal as to prices and delivery possibilities as well as to delivery dates. The offers are subject to prior sale. The prices are ex warehouse Salzgitter, plus applicable statutory turnover tax unless expressly stipulated otherwise.

2. Non-acceptance of Goods

In the event of unjustified non-acceptance of goods, the costs incurred by us (10 % of the sales price) are to be reimbursed, the purchaser remaining free to provide proof that the damaged suffered by us is inferior. It shall furthermore be considered as unjustified non-acceptance, if, in the event of a somewhat prolonged date of delivery the purchaser refuses to accept the goods without prior cancelling his order. If, upon the planned delivery date and a reasonable extension of time for acceptance granted to the purchaser having expired, the purchaser refuses to accept the good we shall be entitled to either cancel the contract or claim damages for non-performance. There is no need to grant any extension of time if the purchaser seriously and definitely refuses acceptance, or if obviously is unable to pay the purchase price even within such extended time. We shall be entitled to claim damages in the amount of 10 % of the purchase price. Such amount shall be higher of/ or lower on our or the customer's proving that the damage suffered was higher or lower.

3. Times of Delivery

All times of delivery and due dates given shall be noncommittal. Part deliveries are permissible. Unforeseeable obstructions to delivery such as force majeure, strikes, operational failure either in our works or in those of our suppliers, transport problems etc. shall entitle us to postpone delivery for the period of such obstruction plus an adequate time span or even to withdraw partly or entirely from the contract. If we are answerable for the non-performance of any binding term of delivery or for delayed delivery, the purchaser shall be entitled, thus excluding any further action, to claim damages for delay up to a total of 1/2 % for each completed week of the delay, but in no case more than a maximum of 5 % of the invoiced value of the delayed deliveries and services. This provision shall not prejudice his right to cancel the contract in accordance with the legal provisions. Parts, which are temporarily out of stock, shall automatically be registered as arrears and be delivered within shortest.

4. Shipment

The risk is transferred to the purchaser as soon as the goods have been handed over to the carrier or as soon as they have left our warehouse for dispatch. In the event of shipment abroad the International Delivery Conditions in accordance with Incoterms 2000 shall be applicable in addition to the present terms.

5. Packing Material

Packing material shall be charged separately.

6. Terms of Payment and Basis of Invoice

6.1 Unless otherwise agreed, the amount of invoice shall be payable notwithstanding possible quality complaints within fourteen days of invoice date with a discount of 2 % or within thirty days without discount.

6.2 If payments are made later, interest at a rate of 5 % above the base rate shall be payable from the date when they fall due to the date of payment, without a demand being necessary. If the buyer is in default, interest at the rate of 8 % above the base rate shall be payable until the date of payment. The buyer shall be entitled to furnish evidence that the actual loss or damage was lower.

6.3 Payment shall not be considered as effected, unless the amount is at our disposal. In the event of payment by cheque, payment shall not be considered as effected unless the cheque has been honoured and unrestricted credited to our bank account.

6.4 If an invoicing is done in a currency other than German it will be done on the basis of the current Euro-rate of the day the account is placed, according to the "Tagesbriefkurs" of the official Frankfurt Quotation.

6.5 In case of deviations of more than 5 % on the day the payment is received we are authorised to make a recalculation. If the customer is in default of payment of any undisputed claim, or any obviously unfoundedly dispute claim, we shall be entitled to reimbursement by him of the damage so caused in the amount of no more than the costs charged by a licensed collecting agency for collection expenses, inclusive of any reasonable contingency fees, equalling comparable solicitor's fees. This shall apply also in the event that the collecting agent fails and a lawyer's advice is solicited to collect the outstanding accounts by judicial process. Any default interest due to us is payable by the customer also during the collecting agent's activity until the full account has been recovered.

7. Reservation of Proprietary Rights

7.1 The seller shall retain title to all items delivered until the seller's claims arising from the business connection have been paid in full. This shall apply even if the buyer pays the purchase price of particular deliveries, for in this case the retained title to the goods secures the seller's claim for the balance. Processing or transformation of the goods shall always be deemed made for the seller.

7.2 Customers who are dealers may resell the reserved goods in the due course of business. If the buyer is in default of payment, the seller may revoke the authority to resell.

7.3 The buyer hereby by way of security transfers to the seller in full as of today's date the claims arising from the resale or for another legal cause in relation to the reserved goods. If reserved goods are resold together with other goods at a total price, the assignment includes a part claim of first priority equivalent to the invoice value of the goods. The assignment of the claim also includes claims of the buyer to the final balance of a current account where such balance has been agreed between the buyer and its customers. On request, the buyer shall disclose the list of claims assigned and give all information that is requested relating to the claims assigned to the seller, and also produce the supporting documents.

7.4 If the buyer is not itself a dealer, the buyer shall not be entitled to resell before the seller's total claim arising from the business connection under no. 7.1 has been fully paid except with the written consent of the seller. No. 7.3 (assignment of claims in advance) shall apply mutatis mutandis.

7.5 On the buyer's default in payment or other substantial breaches of contract, the seller shall be entitled after fixing an appropriate time-limit to terminate the contract and to take back the goods. The buyer is under a duty in this case to assign to the seller claims against third parties for restitution of property. The buyer shall irrevocably authorise the seller to enter the buyer's premises where the reserved goods are stored in order to enable the seller to remove the goods or to inspect them.

7.6 If the value of the seller's security, including the assignment of future claims, continues for a period of time to exceed the value of the seller's claims by 20 %, the seller shall be obliged at the request of the buyer to release to the buyer securities granted to the buyer, such securities to be at the choice of the buyer, until the value of the remaining securities exceeds the value of the seller's claims by less than 20 %. The reference figure for calculating the value of the security shall be the seller's current sales price, less 10 % if the goods are no longer new.

7.7 The buyer shall not be permitted without the seller's consent in writing to pledge the reserved goods or to transfer ownership of the reserved goods by way of security.

8. Defects as to quality

The seller shall be liable for quality defects as follows:

8.1 All the parts or services shall, at the choice of the seller, be remedied, replaced or rendered again if within the limitation period they show a defect of quality, provided that the cause of the defect existed at the date of passing of risk. First, the seller shall be given an opportunity to make supplementary performance.

8.2 Warranty claims shall become statute-barred in twelve months. This shall not apply to the extent that, under sections 438 (1) no. 2 (buildings and things for buildings), 479 (1) (right of recourse) and 634a (1) no. 2 (building defects) Civil Code, statute does not lay down longer periods, and in cases of death or injury to body or health, of an intentional or grossly negligent breach of duty by the seller and fraudulent concealment of a defect. The statutory provisions on suspension of expiration of the limitation period, suspension and recommencement of the limitation period shall remain unaffected.

8.3 Notice in writing, in the case of any defects in the products supplied, shall be made immediately after delivery, but in the case of hidden defects immediately after the defect is discovered.

8.4 If the supplementary performance fails, the seller - without prejudice to any damages claims under no. 9. - may terminate the contract or reduce the payment.

8.5 Claims of the seller for the expenses incurred for the purpose of supplementary performance, in particular carriage of goods, workmen's' travel costs, costs of labour and materials, are excluded to the extent that the expenses are increased because the delivery item has subsequently been taken to a different location than the buyer's premises, unless the transport to that location is in accordance with the intended use of the item.

8.6 Rights of recourse of the buyer against the seller under sections 478 Civil Code (businessperson's right of recourse) shall exist only to the extent that the buyer has not entered into any agreements with its customer that go beyond the statutory warranty claims. The scope of the buyer's right of recourse against the seller under sections 478 (2) Civil Code shall further be subject to no. 8.5 mutatis mutandis.

8.7 In other respects, claims to damages shall be subject to no. 9. (other claims to damages). Claims of the buyer against the seller and the seller's agents for whom it is vicariously liable going beyond this or other than those dealt with by no. 9. shall be excluded.

9. Other claims to damages

9.1 Buyer's claims to compensation and reimbursement (hereinafter: "claims to damages), on whatever legal basis, in particular for the breach of duties under the obligational relationship and in tort, are excluded.

9.2 This shall not apply if liability is mandatory, for example under the Product Liability Act (Produkthaftungsgesetz), in cases of intention, of gross negligence, or of death, or injury to body or health or the violation of fundamental contractual duties. The claim to damages for the violation of fundamental contractual duties shall, however, be restricted to damage that is typical of contacts and foreseeable, unless there is intention or gross negligence, or death or injury to body or health. The above provisions do not entail a reversal of the burden of proof to the detriment of the buyer.

9.3 To the extent that the buyer has claims to damages under this no. 9., these claims shall expire at the end of the period of limitation for defects of quality under no. 8.2. Claims to damages under the Product Liability Act shall be subject to the statutory provisions on limitation.

10. Export

The goods delivered are subject to German and American export controls and embargo regulations. Their export is permissible only with the approval of the competent European authorities, the German Federal Office of Economics and Export Control, Eschborn/Taunus and the Bureau of Export Administration, Washington. In addition, on the export of all goods, account must be taken of the national export control provisions and international embargo provisions. The seller points out that a violation of these provisions constitutes a criminal offence.

11. Place of Performance and Jurisdiction

11.1 The place of performance and, as far as legally permissible, the sole place of jurisdiction for all disputes arising directly or indirectly from the contract, shall be Salzgitter. The German law applies to the contract.

11.2 In the event of one clause of the present terms being or becoming void, this shall not affect the validity of all other provisions or agreements.

In case of any conflict between the German and English text interpretation of the German language text prevails.

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