



Issue 01/2009

Sales and Delivery Conditions

I. Offer and Conclusion

1. Seller's offers are not binding. Contracts shall be considered as having been concluded after written confirmation of order only.
2. If the Buyer delivers drawings or quality samples, the Buyer has the responsibility to take care that the rights of a third party are not affected by their use.
3. Seller's offers and all calculations, sketches, drawings, etc. worked out are Seller's intellectual property. They must not be published, duplicated and it is not allowed to offer their inspection to third parties without Seller's written consent - even if an order is placed.

II. Prices

1. All offers are based on the wages and prices for raw materials and fuels, freight charges, duties and exchange rates valid at the time when the offer is made. Should the basis for the calculation change afterwards, prices are subject to change in accordance with the rise of costs. Prices are subject to change, if between the conclusion and delivery more than 4 months have passed.
2. Any supplemental charges which are caused by order amendments later in time for which the Seller is not responsible are to be borne by the Buyer.
3. All duties as well as taxes and costs to be paid outside of the Federal Republic of Germany are to be borne by the Buyer.

III. Delivery

1. Delivery shall be done ex work (Incoterms 2000). The delivery time starts on the day agreed between Buyer and Seller not earlier than the day, on which all technical and other details have been clarified and on receipt of documents from abroad that might be required, like import licenses or letters of credit. Should the Buyer not respect his obligations resulting from the contract, the Seller is not bound to keep to the agreed deadlines.
2. The Seller shall not be held responsible for the delay in delivery or non-delivery of the goods in case the delivery of the contracted goods is prevented or delayed by reason of war, serious fire, flood, earthquake, or other Force Majeure Causes like strike and lock-out. In this case, the Seller has the right to prolong the delivery time correspondingly or to declare the contract void in parts or completely if it is partially or completely impossible to maintain the management of the factory or the dispatch.
3. In the event that the seller is culpably in delay with the delivery, the Buyer can fix a reasonable extension of time and after expiration of this time withdraw from the contract as far as it has not yet been fulfilled. If the partial fulfilment is not of interest to the Buyer he can withdraw from the entire contract. Further rights, especially claims for compensation of damages are excluded unless a case is given as stipulated in number IX section 2.

IV. Manufacture

Inspections and examinations in the works are subject to German rules.

V. Acceptance

1. If the goods are inspected by the Buyer before being shipped, they are considered as being accepted unless a claim is pronounced immediately after the inspection.
2. If goods that are ready for dispatch are stored at the Buyer's disposal for reasons that are under his responsibility they can be invoiced immediately and payment be claimed. Goods are then stored on account and at the risk of the Buyer.

VI. Invoicing and Payment

1. The goods' weight determined on the scales of the works is relevant for the determination of the weight of the goods to be invoiced.

2. Seller's invoices have to be settled latest within 14 days after the date of invoice without any discounts.
3. When due dates of payment are exceeded the Seller is entitled to request interest for delay according to the legal rate, at least 8 % above the Basic Interest Rate of the Deutsche Bundesbank (German Federal Bank).
4. If bills of exchange have to be handed in for settlement, all charges and fees in connection with the bills of exchange are to be borne by the Buyer.
5. The Seller shall have the right to offset Buyer's claims for payment against any such counter-claims to which the Seller or any of his affiliated companies (in which the Seller holds an ownership greater than 50 percent) are entitled. A setoff by the Buyer is only admissible with legally binding counter-claims or counter-claims which have been accepted by the Seller. Only counter-claims that have been accepted by the Seller give the Buyer the right to retain due payments.
6. In case of justified doubts in the solvency of the Buyer, the Seller may declare further deliveries to be dependent on the presentation of sufficient securities.

VII. Retention of title

1. The goods delivered remain the property of the Seller until all claims resulting from the delivery contract or from earlier contracts between the parties have been settled.
2. In the event of default in payment, a substantial deterioration in the Buyer's financial circumstances, the opening of judicial or extra-judicial composition proceedings or bankruptcy proceedings in respect of the Buyer's assets, the Seller can – without withdrawing from the contract – demand the return of the item, in which case the costs of return transport are borne by the Buyer. The same applies if substantiated doubts arise about the Buyer's ability of willingness to pay, after delivery.
3. As long as the Buyer has not exceeded the payment term, he has the right to process the goods in the usual running of business or to sell them on his behalf. If goods under reservation of title of the Seller are processed to new mobile goods or mixed or bound with mobile goods which are not the property of the Seller, this is done on the Seller's orders without any obligations resulting from this. These goods become thus the full or partial property of the Seller and are being stored on his account by the Buyer. Claims resulting from the sale or processing of goods on the Buyer's behalf, even if the goods are incorporated into immovable, are assigned to the Seller already at this period of time. The amount is the sum claimed from the Buyer for the goods under reservation of title or resulting from collective invoices, the rank being higher than the balance.
4. The Buyer is not authorised to pledge the goods or to transfer their ownership by way of security. The Seller has to be informed immediately by the Buyer about levy of execution against the Buyer.
5. As long as the Buyer is not in delay in payment, he may resell or further process the goods according to proper business operations. The Buyer assigns any claims arising from processing, mixing or selling the goods supplied by the Seller, to the Seller with top level priority. The assigned claims shall be the Seller's security in the amount of the goods' value that has been sold. The Buyer is obliged to tell the Seller, on his request, the name of the garnishee, as well as the above specified amounts. The Seller may inform the garnishee about the assignment and claim the assigned amount. The Buyer may collect the assigned amount only until he has fulfilled his duties towards the Seller. The Seller becomes automatically the owner of the collected amounts, which have to be put aside by the Buyer. As soon as the payments are due the Buyer has to transfer the money to the Seller. The Buyer is not allowed to transfer any rights of the claims to garnishees.

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6. If the value of the securities offered to the Seller exceeds the sum claimed by more than 20 %, he has to release parts of the securities on the Buyer's demand and at the Buyer's choice.
7. In the case the given securities are not valid or insufficient and the Buyer has not given other securities, the Seller may request from the Buyer at any time other securities.
8. Retention of title and all other securities of the Seller are as long valid as all Seller's obligations, that he has entered into in the interest of the Buyer, are released

VIII. Warranty

1. The Seller warrants, within the framework of the clauses stipulated herein, that the goods he delivers are, at the point in time of passing the risk, be free of any defects that would nullify or be otherwise detrimental to the goods' value or suitability for common use or for the use stipulated in the contract to more than a merely minor extent.
2. The Buyer shall examine without undue delay, whether the goods delivered have the contractually agreed quality. No claims for defects that were detectable immediately upon receipt of the goods may any longer be raised after the goods have been sold, processed or built into any other object(s). Warranties over time for the durability of any material(s) are not given as a matter of principle.
3. Claims for any defects that may appear in the deliver may only refer to the individual defective pieces. From this point of view, all deliveries shall be considered divisible.
4. After a justified claim has been made within the warranty period, the Seller shall, at his discretion, either eliminate the defect or make a substitute delivery within an appropriate period. If the original order included the delivery of documentation for construction or assembly and these are incorrect, the Seller shall only be liable within a warranty period of one year from date of delivery of the documentation for correcting said documents and only, in so far as this is required as a result of the defects involved, for a substitute delivery free-of-charge of the material purchased from the Seller. The same applies if the Seller gives written consultations and/or technical details. The Seller is not liable for advice and information given orally.
5. If any repair or substitute delivery fails multiple times, or if the Seller still finds himself in arrears as to the fulfilment of his duties after expiry of a subsequent deadline to remedy the defects, such deadline having been stipulated to the Seller in writing, then the Buyer may demand an appropriate reduction in price. The Buyer may only request cancellation of the contract in cases in which his interest in the goods is proven to be significantly prejudiced by the defect, especially in cases in which the substitute delivery of the goods agreed upon in the contract turns out to be impossible. As long as nothing to the contrary is stipulated in these clauses, all further claims are excluded.
6. In case of disputes regarding the warranty of chemical-physical properties of the material(s), a decision shall be made exclusively by a neutral specialist institute named by the Seller. Random samples shall be taken together, if at all possible. The Party who proves to be wrong shall bear all costs for testing.
7. Should the Seller carry out any test for defects, substitute deliveries or repair work upon the request of the Buyer and it

turns out later that a duty on the part of the Seller to take over such work did not exist, the Buyer shall pay such services in accordance with the conditions of the order.

8. If the Seller supports the Buyer's installation managers with his staff in supervision or monitoring of installation, than the Seller is only liable for selecting suitable specialist staff and giving such staff the required and correct expert consultation. Any claims above and beyond this are excluded. In terms of the monetary amount, the Seller's liability is limited to three times the compensation agreed upon for this monitoring work or, should no specific compensation have been stipulated for the monitoring work, to three times the amount normally paid for such work. This shall apply unless it is a matter settled under Sec. IX Para. 2. If delivery and installation of the materials has been agreed, the Seller's service conditions shall apply.

IX. Liability

1. Providing nothing to the contrary ensues from these conditions, the Seller shall be held liable in the case of a violation of the contractual and extra-contractual obligations according to the relevant statutory regulations.
2. In the case of simple negligence the Seller is only liable a) for damages ensuing from injury to life, body or health, b) for damages ensuing from violation of an essential contractual duty (obligation, the fulfilment of which permits the correct execution of the contract in the first place and on the observation of which the contractual partner regularly relies and is entitled to rely); in this case Seller's liability is, however, limited to the loss which he ought to have foreseen. Loss foreseen is limited to 110 % of the contract price.
3. Limitations in liability are not valid in case of Seller's intent or gross negligence.

X. Limitation of time

1. The reciprocal claims of the contractual parties become invalid according to the statutory provisions, providing nothing to the contrary has been stipulated.
2. The general period of limitation for claims ensuing from material and legal defects is one year as from delivery. If acceptance before delivery has been agreed, the period of limitation commences with the acceptance.

XI. Place of performance and jurisdiction

1. Place of performance for payment is Königswinter.
2. The competent court for jurisdiction for both parties is the court appropriate to the Seller's branch establishment. The Seller has the right, however, to suit the Buyer at the court appropriate to Buyer's place of business.
3. The Agreement is subject to German law.

XII. General Provisions

Buyer's personal data are handled by the Seller in compliance with the provisions laid down in the Federal Data Protection Act (BDSG).