

# Standard Terms and Conditions for the Sale of Goods (Export)

## 1. Application

(1) These terms and conditions of sale shall apply exclusively. Differing or contrary terms shall not apply except if expressly agreed upon in writing.

(2) 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 the seller.

(3) These terms and conditions of sale shall also govern all future transactions between the parties and shall also apply if the seller performs delivery despite his knowledge of differing or contrary terms.

(4) 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.

(5) These terms and conditions of sale shall only apply vis á vis entrepreneurs, governmental entities, or special governmental estates within the meaning of sec. 310 para. 1 BGB (German Civil Code).

## 2. Orders, Specifications

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

(2) 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.

(3) 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.

(4) 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.

(5) 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. Prices**

(1) 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.

(2) 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 an increase in the costs to the seller which is due to any external 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, and he will reduce the price if external costs (such as customs duties) vary or do no longer apply.

(3) 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 parties, all prices are given by the seller on an ex works Mannheim basis (EXW Mannheim, Incoterms 2010). 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.

(4) 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**

(1) Unless otherwise agreed between the parties, the buyer shall pay the price of the goods within 30 days after receipt of the seller's invoice.

(2) Payment shall be effected by inter bank payment transaction only; no cheque or bill of exchange will be considered as fulfilment of the payment obligation.

(3) It may be agreed between the parties that the buyer has to make advance payments in parts or in full, or to deliver a letter of credit issued by his bank (or any bank acceptable to the seller). In this individual latter case it is assumed that any letter of credit will be issued in accordance with the Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600.

(4) 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 9 per cent per annum above the base interest 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**

(1) 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.

(2) Delivery is conditioned upon timely and proper performance of all duties of the buyer. Defences based on non-performance of the contract are reserved.

(3) In case of default in acceptance or other breach of duties to cooperate by the buyer, the seller is entitled to claim any resulting damage including but not limited to additional expenses, if any. Further damages are reserved.

## **6. 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 in Mannheim ("ex works" Mannheim, EXW Mannheim, Incoterms 2010) at that time when the seller notifies the buyer that the goods are available for collection.

## **7. Offset, Retainer**

The buyer shall be entitled to offset only insofar as the buyer's counterclaim is acknowledged, undisputed or assessed in a legally binding judgement. The buyer is entitled to claim retainer rights only to the extent such rights are based on the same transaction.

## **8. Retention of Title**

(1) The seller retains title to the goods until receipt of all payments in full. In case of breach of contract by the buyer including, without limitation, default in payment, the seller is entitled to take possession of the goods.

(2) The buyer shall handle the goods with due care, maintain suitable insurance for the goods and, to the extent necessary, service and maintain the goods.

(3) As long as the purchase price has not been completely paid, the buyer shall immediately inform the seller in writing if the goods become subject to rights of third persons or other encumbrances.

(4) The buyer may resell goods subject to the above retention of title only in the course of his regular business. For this case, the buyer hereby assigns all claims arising out of such resale, whether the goods have been processed or not, to the seller. Notwithstanding the seller's right to claim direct payment the buyer shall be entitled to receive the payment on the assigned claims. To this end, the seller agrees to not demand payment on the assigned claims to the extent the buyer complies with all his obligations for payment and does not become subject to an application for insolvency or similar proceedings or to any stay of payments.

(5) Insofar as the above securities exceed the secured claim by more than 10%, the seller is obligated, upon the seller's election, to release such securities upon the buyer's request.

## **9. Warranty, Liability**

(1) Precondition for any warranty claim of the buyer is the buyer's full compliance with all requirements regarding inspection and objection. The buyer must examine the goods, or cause them to be examined, immediately after transfer of risk.

(2) Warranty claims shall be time-barred after 12 months of the transfer of risk.

(3) 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.

(4) 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.

(5) 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 to the seller.

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

(7) 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.

(8) All further claims lodged by the buyer, above all claims to make good any loss or damage from whatever cause arising, including damage not occurring to the goods themselves, shall be excluded, whatever legal ground may be underlying such claims.

(9) The said exclusion of liability shall not apply in the case of intent or gross negligence on the part of the seller, in the case of negligence causing damage to life, body or health, nor in cases of negligent breach of a condition which goes to the root of the agreement.

(10) In cases of negligent breach of a condition which goes to the root of the agreement the seller shall be liable only – except in cases of intent or gross negligence on the part of the seller – for reasonably foreseeable damage which is intrinsic to the agreement.

(11) Nor does the said exclusion apply in cases of strict liability, under the Product Liability Act (Produkthaftungsgesetz), for defects of the goods causing death or personal injury, or damage to items of property that are used privately. Furthermore, the said exclusion of liability shall not apply in the case of damage due to fraudulent concealment or despite specific guarantees.

## **10. Miscellaneous**

(1) 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.

(2) 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 to the date hereof, and which shall become null and void from the date of the agreement is signed.

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

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

## **11. Applicable law, Place of jurisdiction**

(1) Any agreement concluded between the parties according to these terms and conditions shall be governed by and construed in accordance with German law, explicitly relating to the provisions of the Convention on Contracts for the International Sale of Goods – UN Sales Convention/CISG). Outside the application of the law of the UN Sales Convention/CISG, the contractual relationship shall be governed by non-uniform substantive German law, namely by the law of the German Civil Code (BGB).

(2) Each party agrees to submit to the jurisdiction of the courts having jurisdiction for the seller.

(3) 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 for the place of performance of the obligation in question.