

Terms and Conditions for the Sale of Goods (Export) Non-EU

1. Preamble

These Standard Terms and 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 the 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 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 Standard 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 21 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. 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 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.

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 pricelist 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.

We shall reserve the right, in the case of a time of delivery of more than 4 months, to increase the prices according to the increase in costs incurred because of raised labour, equipment and material costs. If the price increases by more than 4.5% of the agreed price, the customer, if he is no trader, shall have the right to cancel the contract; this right shall be exercised in writing within one week after receipt of the notification of the price increase.

The quotations of the non-ferrous metals industry are authoritative for the determination of the metal prices.

Copper: The quotation of electrolyte copper for conductor production (DEL quotation of the day) plus procurements costs.

Aluminium: Al for conductor production 99.7% cash/sellers (London Metal Exchange, LME) plus additional charges.

Lead: Lead quotation i.a.w. German Industrial Standards (DIN) 17640.

Quotations used in offers shall not be binding. The quotation of the day after receipt of the clarified order shall be authoritative for the order. The order shall be deemed clarified if we are able to confirm the order in a binding manner with respect to amount, type, time of delivery and so forth. If the calculation of the price is made on the basis of a blank price or another fictitious price basis, and if the quotation of the day deviates from this basis, the prices per 1,000 m shall be adjusted by the amount resulting from the multiplication of the metal number (Cu, Al, Pb) with the metal price difference. All metal surcharges or discounts shall always be net amounts.

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 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 within 30 days after receipt of the seller's invoice. 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. It may be agreed between the parties that the buyer has to deliver a letter of credit issued by his bank (or any bank acceptable to the seller). In this individual case it is assumed that any letter of credit will be issued in accordance with the Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 500. If the buyer fails of 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 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

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 0,5% per week (and up to a maximum of 5%) 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 effecting 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 buyer by reason of the failure of the seller.

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 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 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 ("ex works", Incoterms 2000) at that time when the seller notifies the buyer that the goods are available for collection.

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.

After termination of the contract the seller shall have absolute authority to retake, sell or otherwise deal with or dispose of all or any part of the goods;

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.

If third parties take up steps to pledge to otherwise dispose of the goods, the buyer shall immediately notify the seller in order to enable the seller to seek a court injunction in accordance with § 771 of the German Code of Civil Procedure. If the buyer fails to do so in due time he will be held liable for any damages caused.

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

The customer shall be obliged to inspect the goods immediately after receipt of the shipment and to notify us in writing of existing defects as soon as possible (but not later than 5 days after receipt of the shipment). Defects which are notified out of time, i.e. in violation of the aforementioned obligation, shall not be taken into consideration by us and shall be excluded from the liability. We shall admit notices of defects only if they are submitted in writing. Notices of defects which are asserted toward field staff or third persons shall constitute no notices of defects submitted in due form and time. In this regard German law shall apply, § 377 HGB, German Commercial Code.

The customer shall be obliged to make the shipment or parts of the shipment to which objection was made available for us for the purpose of examination of the objection. If this is culpably denied, the liability shall be cancelled.

If a rectification of defects or a substitute delivery is made as a result of a legitimate notice of defects, the provisions on the time of delivery shall apply *mutatis mutandis*.

The existence of a defect determined as such and notified through an effective notice of defects shall constitute the following rights of the customer:

In the case of defectiveness, the customer first of all shall have the right to demand a subsequent performance from us. We shall have the right to choose, at our own discretion, whether a new delivery of the goods or a rectification of the defects shall be conducted.

In addition, in the case of failure of an attempted subsequent performance, we shall have the right to another subsequent performance, the type of which shall again be chosen at our own discretion. Only if the repeated subsequent performance fails as well, the customer shall have the right to withdraw from the contract or to reduce the purchase price.

The warranty period shall be one year from the time of delivery. The customer shall be obliged to prove in any case that the defect already existed at the time of delivery.

We shall not be liable for normal wear and tear.

In the case of defects at components of other producers, which cannot be eliminated by us because of licence or other reasons, we shall at our own discretion assert our guarantee claims against producer and supplier on account of the customer or shall transfer the title to the customer. In the case of such defects guarantee claims can only be asserted against us under other requirements and according to these general terms and conditions of delivery if the legal implementation of before mentioned claims against the producer and supplier have been in vain or there is no reasonable chance, as e.g. in the case of insolvency. For the time of the legal action the limitation period for the respective guarantee claims of the customer against us shall be suspended.

Liability for compensation caused by negligence

Our liability on compensation, irrespective on which legal reason, especially caused by impossibility, delay, faulty or wrong delivery, default on contract, violation of duties with contract negotiations and unlawful acts, as far as in each case a fault is concerned, is limited according to this paragraph.

We are not liable

- a) for slight negligence of our bodies, legal agents, staff or auxiliary persons
- b) for gross negligence of non-executive staff or auxiliary persons, as far as violation of essential contractual obligations is not concerned.

As far as we are liable in principle for compensation, this liability is limited to failures which we, when concluding the contract, have foreseen as a possible result of a contract violation or taking in account the circumstances which we knew or must have known, or which we must have foreseen with the application of care and attention. Indirect and consequential damages, occurring as a result of failures of supplied goods are, moreover, only then compensable, as far as such damages are typically expectable with intended application of the goods supplied.

In the case of liability for slight negligence our indemnifiability for damage to property or persons is limited to a sum of 2.500.000 per claim, even if essential contractual obligations are concerned.

The before named disclaimer and liability limitations are valid to the same degree in favour of our bodies, legal agents, staff or auxiliary persons.

As far as we are giving technical information or consultancy and these information and consultancy are not belonging to the contractually agreed performance scope, this service is free of charge, excluding any liability.

The limitations of this paragraph shall be not valid for liability by reason of wilful intent, for guaranteed characteristics of state, by reason of violation of life, body or health, or according to the product liability act.

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.

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

Each party shall be responsible for all its legal, accountancy or other costs and expenses incurred in the Performance of its Obligation hereunder.

10. Choice of Law; Place of Jurisdiction

This agreement shall be governed by and construed in accordance with German law.

Any dispute arising out of this Agreement shall be finally settled in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by one or more Arbitrators designated in conformity with those rules.

The seller shall have the right to bring a claim before a court at the buyers principal place or at his discretion before any other court being competent according to any national or international law.