

## General Delivery Conditions – Abroad (2007)

**1. Applicability: Quotations**

- 1.1 These General Conditions shall apply for all deliveries to destinations in other countries (outside Germany). They shall also apply for future deliveries, unless the Contracting Parties agree otherwise in individual cases. Any terms and conditions of the Buyer differing from those specified herein will be binding on the Seller only if he expressly confirms acceptance thereof in writing. The Seller's relevant conditions for installation and erection services and the rates mentioned therein shall apply in addition to these General Conditions.
- 1.2 The Seller's quotations are offers without engagement. Any documents or data, such as illustrations, drawings, details of weight and dimensions, forming part of the Seller's offer, are only to be considered approximate, unless expressly designated as binding. The Seller retains ownership of, and copyright in, all cost estimates, drawings, project proposals, documentation and other data or information furnished to the Buyer; they may be neither made available to any third party nor reproduced in any form without prior permission from the Seller.
- 1.3 With regard to such items to be delivered under the Contract, or their individual components, as are covered by applicable Government export regulations, the Seller's performance of the Contract shall be subject to the required licenses being granted to the Seller.

**2. Extent of Delivery of Products/Works by the Seller**

- 2.1 The Seller's written order confirmation shall be conclusive in determining the extent of delivery of products/works by the Seller. If a quotation limited by the Seller with regard to its period of validity is accepted by the Buyer within the stated time limit, but no timely order confirmation has reached the latter, then the Seller's quotation shall be conclusive in determining the extent of delivery of products/works by the Seller.
- 2.2 No collateral agreements or amendments shall be effective unless accepted by the Seller in writing.
- 2.3 Insofar as any modifications requested by the Buyer after placing the order result in increased expenditure for the Seller, the latter shall be entitled to claim an appropriate increase in price.

**3. Prices and Payment**

- 3.1 Unless otherwise agreed, the Seller's prices are always for delivery FCA (place of manufacture), which includes loading in the works, but excludes packing costs. Invoicing will be with the addition of VAT at the level chargeable under the law. In the case of deliveries within the European Community, the Buyer shall be under obligation to communicate to the Seller sufficiently in advance, i.e., not later than 4 weeks prior to the Contractually agreed delivery deadline, the complete sequence of his VAT registration number as proof required for the purpose of exemption from VAT. With respect to all other export shipments, the Seller shall be entitled to charge VAT at the legally prescribed level by subsequent invoicing, unless the Buyer provides the Seller with proof of exportation within one month from the date of the shipment concerned.
- 3.2 In the absence of any other specific agreement, payment shall be in cash and without any deductions and be made free the Seller's payment office as follows:  
1/3 down payment with order, against down payment invoice.  
2/3 upon the Buyer being notified that the major parts of the Contract products are ready for shipment.
- 3.3 The Buyer's obligations to effect payment - by whichever means - to the Seller are only considered as fulfilled if and when a given amount invoiced by the Seller to the Buyer is fully and irrevocably credited to the Seller's account. If any payment owed by the Buyer to the Seller is not made when due, the Seller shall be entitled to claim a late charge to be calculated from the due date at the rate of 5% per annum above the current Deutsche Bundesbank discount rate/base interest rate.
- 3.4 The Buyer is not permitted to withhold payment or offset any payments against claims of the Buyer which are disputed by the Seller.
- 3.5 If the Buyer's financial position substantially deteriorates, thereby creating a risk that any sum payable to the Seller might not be paid, then the latter shall be entitled to suspend deliveries until payment is effected or adequate security supplied.

**4. Time of Delivery: Delay**

- 4.1 If the Contract specifies a time period allowed for delivery, such period shall commence with the dispatch of order confirmation. In the case of any delay in receipt of the agreed-upon down payment and/or in the opening of the agreed-upon letter of credit, or in the case of any subsequent modification of the extent of the Buyer's order, or in the case of the Buyer's obligations under the Contract not being fulfilled in good time, in particular in the case of delayed provision by the Buyer of documents and/or permits and/or releases as specified in the Contract, the delivery period/delivery deadline will be extended accordingly. The Seller reserves the right, after a reasonable extension period has been granted to the Buyer, but has expired without result, to make other arrangements for the disposal of any products/works which the Seller may have available for delivery under the Contract and to deliver the ordered products/works to the Buyer only within a period reasonably extended.
- 4.2 The delivery period shall be deemed to have been observed if, by the time of its expiry, the Contract products have left the works or the Buyer has been notified of their readiness for shipment.
- 4.3 The delivery period or the delivery deadline shall be reasonably extended in the case of any delay arising out of an industrial dispute, particularly a strike or a lock-out, or where any unavoidable obstacles to the Seller's performance of the Contract arise (Force Majeure), insofar as such obstacles can be proved to have a significant effect on the completion or delivery of the Contract products/works. This shall also apply where such circumstances arise on the side of any subcontractors whom the Seller may employ for the performance of the Contract. The Seller will not be responsible for circumstances as aforesaid, even if they arise while performance of the Contract is already in delay.
- 4.4 Should the Buyer suffer damage or loss as a result of a delay in delivery for which the Seller is responsible, the Buyer shall to the exclusion of any other remedies be entitled to claim a lump-sum compensation. Such compensation shall amount to 0.5% for each full week of delay, but limited to a maximum of 5%, of the value of that part of the delivery which, due to the delay, cannot be used on time or in accordance with the Contract.
- 4.5 Where the Buyer, given the length of the delay in delivery by the Seller, has become entitled to the maximum lump-sum compensation as per sub-section 4 hereof and the ordered products/works have not yet been delivered, the Buyer shall be entitled to fix a final deadline for delivery with the express statement that on expiry of that deadline he will refuse acceptance of the delivery. Should the Seller fail to meet such final deadline for a cause for which he is responsible, the Buyer shall be entitled by notice in writing to the Seller to terminate the Contract in respect of such portion of the ordered products/works as cannot in consequence of the Seller's failure be put to the intended use.
- 4.6 Where shipment is postponed at the Buyer's request, or in the case of the Buyer's failure to accept the delivery at the agreed-upon date, the Seller shall be entitled to charge him for the incurred costs of storage, but not less than 0.5% of the invoice amount, for each month. Furthermore, the Buyer shall pay such portion of the purchase price as agreed between the Contracting Parties to be due upon the delivery of the ordered products/works concerned, as if the delivery thereof had taken place. The Seller shall be entitled to require the Buyer by written notification to accept the delivery within a reasonable final period. After such final period may have expired without result, the Seller shall be entitled by notice in writing to the Buyer to terminate the Contract in whole or in part or, at the Seller's option, to claim compensation on the ground of default.
- 4.7 The Buyer shall be entitled to terminate the Contract, if it becomes impossible for the Seller prior to passing of risk of loss to perform his Contractual obligations in entirety. The same applies if the Seller is rendered incapable of performance as aforesaid. Moreover, the Buyer may terminate the Contract, if it becomes impossible for the Seller in the case of identical Contract products to deliver the required number thereof and if delivery of the consequently reduced quantity can be proved to be of no value for the Buyer; otherwise the Seller's non-delivery on the grounds as aforesaid shall only entitle the Buyer to a proportionate reduction of the purchase price.

**5. Delivery: Passing of Risk of Loss**

- 5.1 The sales terms agreed between the Contracting Parties shall be construed in accordance with the current version of the INCOTERMS, as applicable at the time of Contract formation. Failing specific Contractual arrangements, the Contract products shall be deemed delivered "Free Carrier" (FCA). If the Seller, in the case of an FCA sale and upon request by the Buyer, undertakes to send the Contract products to their destination, the risk of loss shall pass to the Buyer not later than upon delivery to the first carrier.
- 5.2 Partial deliveries and invoicing by partial amounts shall be admissible.
- 5.3 The Buyer shall accept items delivered to him under the Contract, even if they show minor defects, his rights as per section 8 below notwithstanding.

**6. Reservation of Ownership**

- 6.1 The Seller retains ownership of the products/works delivered under the Contract until all amounts owed by the Buyer to the Seller pursuant to the Contract or any other contract between the Seller and the Buyer are collected in full. The reservation of ownership as aforesaid affects in no way the provisions of section 5 above concerning the passing of risk of loss. To the extent that the validity of the reservation of ownership is subject in the country of destination to specific preconditions or specific regulations, the Buyer shall have an obligation to ensure that they are complied with.
- 6.2 The Buyer may neither pledge nor transfer title to the delivered products/works as security. He shall inform the Seller at once if any rights of attachment or confiscation or any other rights of disposal by third parties are exercised.
- 6.3 The delivered products/works may be resold by the Buyer only with reservation of ownership until payment of the purchase price. With a view to this eventuality, the Buyer hereby assigns to the Seller any and all accounts and rights which the Buyer may have by reason of the resale of the products/works as aforesaid.
- 6.4 In the case of any act or omission by the Buyer in contravention of the Contract, particularly delay in payment, the Seller shall, after notice to the Buyer, be entitled to recover the delivered products/works and the Buyer shall surrender them. The exercise of the Seller's right of reservation of ownership and attachment of the delivered products/works shall not be regarded as termination of the Contract.

**7. Acceptance**

- 7.1 Where acceptance tests are provided for in the Contract, the Seller shall give to the Buyer sufficient notice of the tests to permit the Buyer's representatives to attend. If the Buyer is not represented at the tests, the test report shall be communicated by the Seller to the Buyer and shall be accepted by the latter as accurate. Every use of the delivered products/works by the Buyer is considered as acceptance.
- 7.2 The Buyer may not refuse acceptance in the case of minor defects or deficiencies which do not materially diminish the functioning, safety or serviceability of the delivered products/works. This notwithstanding, the Seller shall with all speed make good any such defects or deficiencies.

**8. Liability for Defects**

With respect to defects or deficiencies in the delivered products/works, including deficiencies in expressly warranted features or properties, the Seller hereby - to the exclusion of any other remedies - warrants as follows:

- 8.1 The Seller undertakes to remedy any defect resulting from defective design, materials or workmanship. The Seller shall, at his option, either replace or repair all those parts which, within 6 months from the date of commissioning, are found to be unserviceable or the serviceability of which is materially diminished, if it can be proved that this is the result of a circumstance which existed before the passing of risk of loss. If any such defect is discovered, the Buyer shall report it to the Seller in writing without delay; should he fail to do so, he loses his right to remedial action by the Seller in respect of the defect concerned. Replaced parts become the Seller's property. If the daily use of the delivered item involved is more intensive than as agreed upon between the Contracting Parties, the warranty period shall be reduced accordingly. Should shipment, installation or commissioning be delayed for reasons beyond the Seller's control, his warranty obligations hereunder shall cease not later than 12 months from the passing of risk of loss. With respect to essential bought-out parts, the Seller's liability shall be limited to assigning to the Buyer such warranty remedies as may be available to the Seller against the supplier of the part(s) involved.
- 8.2 The Buyer's right to make claims with regard to defects expires in all cases six months after the date at which timely notice of defects is given in accordance herewith, or upon the expiration of the warranty period applicable in the particular case, whichever is earlier.
- 8.3 The Seller accepts no liability for loss or damage arising from any of the following causes: Unsuitable or improper use, faulty installation or commissioning by the Buyer or any third party, natural wear and tear, faulty or negligent treatment, unsuitable working/substitute materials, Buyer-supplied defective materials, Buyer-required product/works design, poor building construction, unsuitable building soil, harmful environmental conditions, or chemical, electrochemical or electrical effects, insofar as the Seller is not at fault.
- 8.4 The Buyer, after notification of, and agreement with, the Seller, shall allow the latter the necessary time and opportunity as well as provide him with the necessary tools and auxiliary staff to carry out repairs and replacements which appear to the Seller to be necessary and reasonable; otherwise the Seller shall be released from liability for the defects involved. The Buyer shall be entitled to rectify a defect himself or have it rectified by others and claim reimbursement of the necessary costs from the Seller only where operational safety is endangered and disproportionately extensive damage is to be avoided - in which cases the Seller is to be notified immediately - or where rectification of the defect involved has been delayed by the Seller.
- 8.5 If an alleged defect is proved to be a defect in accordance with the intent of the warranty hereunder, then, of the direct costs resulting from the repair/replacement part(s) delivery, the Seller shall bear the costs incurred for the remedial item(s) involved, including shipment thereof. The Seller undertakes to carry out disassembly and re-installation, insofar as this requires special skills in the case of the particular item involved. Otherwise, the delivery to the Buyer of the part properly repaired or a part in replacement of the defective part involved shall be considered as fulfillment by the Seller of his obligations in respect of the defect concerned.
- 8.6 The warranty period for replacement items and repair work is three months, but shall continue at least until the expiry of the original warranty period for the delivered products/works. The warranty period for defects in the delivered products/works will be extended for the time-span of possible interruption of operation as a result of repair work.
- 8.7 The warranty remedies hereunder shall be voided if an alleged defect or deficiency is found to be the consequence of modifications or repairs undertaken in an improper manner by the Buyer or any third party without the Seller's prior consent.
- 8.8 If Seller's rectification attempt ultimately fails, or if such reasonable extension period in respect of a defect within the Seller's responsibility as the Buyer may have specified to the Seller for repair or replacement has - through the Seller's fault - expired without result, then:
- the Buyer shall be entitled to claim a purchase price reduction proportionate to the amount by which, in consequence of the Seller's failure, the value of the delivered products/works may be diminished, with the proviso, however, that such reduction must on no account exceed 15% of the purchase price; or
  - where the defect is so fundamental that the Contract loses its value, wholly or partly, for the Buyer, the latter, after having so notified the Seller in writing, along with a warning of possible repudiation, shall be entitled to terminate the Contract in respect of such portion of the Contract products/works as cannot in consequence of the Seller's failure be put to the intended use.
- 8.9 Further remedies with respect to warranty cases are excluded as per section 12 below.

**9. Seller's Responsibility in Respect of Additional Obligations**

The remedies provided by section 8 above and section 12 below shall also, mutatis mutandis, be the exclusive remedies available to the Buyer, if the delivered products/works cannot through the Seller's fault be used by the Buyer in the manner specified in the Contract because any proposals or advice given before or after the conclusion of the Contract, or any additional obligations under the latter, especially instructions for operation or maintenance of the said products/works, have not been executed or have been executed incorrectly.

**10. Software products**

Where software products are included in the extent of delivery, the following shall apply additionally:

- 10.1 The Seller grants the Buyer a non-exclusive, revocable and non-transferable right to use the delivered software products solely on the system designated in the order confirmation.
- 10.2 If any software functions cannot be brought into service for reasons not attributable to the Seller, the latter shall commission them at a different time, with invoicing based on the work involved.
- 10.3 In the event of any defect in the delivered software products, the Buyer may demand rectification thereof by the Seller outside the latter's plant only if it is technically necessary and economically justifiable to undertake rectification at the site of use, with any resulting extra costs to be borne by the Buyer. The Buyer must prove the existence of alleged defects on the basis of an unchanged version of the software. The Seller's liability for loss of data is limited to the expenditure which would have been required to reconstruct the data, had it been properly secured by the Buyer. Section 8 above and section 12 below shall apply mutatis mutandis. The Seller may claim remuneration if: he has become active on account of a notice of defect without the Buyer being able to prove the existence of the alleged defect; remedying the defect is made more difficult by alterations to the software, made by the Buyer; the defect in question is not attributable to the Seller.
- 10.4 The delivered software products and documents including any modifications thereto remain under the Seller's or his subcontractor's copyright, as applicable. The Buyer is not permitted to reproduce, transfer or use them otherwise than in conformity with the Contract. To modify the delivered software products, the Buyer must obtain the Seller's written consent. Where the warranty period is still in course, it shall cease from the time of modification.

**11. Protected rights of third parties**

- 11.1 Should the Seller's delivery infringe any protected rights of third parties, then - wherever economically justifiable - he shall at his expense, but at his option either obtain a shared right of use for the Buyer or replace the protected part of the delivered products/works so that infringement no longer exists; this to the exclusion of any further remedies as per section 12 below. If the Seller is unable to do so, the rights as per sub-section 8 of section 8 above will be available to the Buyer.
- 11.2 The Seller's liability hereunder does not apply where the delivered item involved has been manufactured according to the Buyer's drafts or instructions.

**12. General limitations of liability**

- 12.1 The Buyer shall have no other remedies available against the Seller than those expressly provided for in these General Delivery Conditions. Any remedies beyond the extent as aforesaid are excluded. In particular, this shall apply in the case of any loss or damage occurring not to the products/works supplied, such as loss of production, decrease in output, or loss of profit.
- 12.2 The Seller accepts no liability in respect of any property loss or damage caused by the Contract products/works after the time of their delivery, where ownership of the Contract products/works involved has already passed to the Buyer. Neither does the Seller accept liability for any loss or damage occurring to the products manufactured by the Buyer.
- 12.3 The foregoing exclusion of liability will not apply in the case of intent or gross negligence on the part of the proprietor of the Seller company or of any of its executive staff. Neither will it apply in case of deficiency in expressly warranted features or properties, where it has been the purpose of such warranty to save the Buyer harmless from loss or damage occurring not to the Contract products/works themselves.

**13. Miscellaneous**

- 13.1 The Seller may, after prior notification, inspect delivered Contract plant in operation at its place of use and show such plant to potential customers of his, unless it can be proved that this would be against important interests of the Buyer.
- 13.2 The Contracting Parties shall treat as confidential all business and company secrets, of which they may have obtained knowledge in the context of their mutual cooperation. This obligation shall also be valid after the Parties may have terminated their mutual cooperation.
- 13.3 Should any individual conditions among those stated herein be or become inapplicable by operation of any contrary mandatory provisions of the law currently in force, the validity of the remaining conditions shall not be affected thereby.
- 13.4 All taxes, fees and/or charges connected with Contractual delivery outside Germany shall be borne by the Buyer. Should the authorities of the Buyer's country levy any taxes, fees and/or other charges on the Seller in connection with such delivery, the Buyer shall reimburse him for the amounts paid.

**14. Settlement of Disputes: Governing Law**

- 14.1 The Contract shall be governed exclusively by the Substantive laws of Switzerland, excluding, however, an application of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 14.2 Any dispute, controversy or claim arising out of or in relation with the Contract, including the validity, invalidity, breach or termination thereof, shall be solved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers of Commerce in force at the date when the Notice of Arbitration is submitted in accordance with these rules. The number of arbitrators shall be three. The seat of arbitration shall be Zurich. The arbitral proceedings shall be conducted in English.