

## **Standard Terms and Conditions for the Sale of Goods**

### **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 acknowledgement, order acceptance or 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.

The 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 (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.

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 property 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 price list 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.

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 any increase in the cost to the seller which is due to any 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.

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 of the date of the seller's invoice.

Payment shall be affected by interbank 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 Practise for Documentary Credits, 1999 Revision, ICC Publication No.560.

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 4 per cent per annum above Federal Reserve Bank Rate/Bundesbank Discount 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 notice in writing to the seller within a reasonable time, to claim a reduction of 0,1% per work day, in total not more than 5% of the overall sum 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 to effect 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. Damages may only be claimed for by the buyer if the seller (or his representatives) intentionally or negligently failed to fulfil the contract. The seller shall nevertheless be held responsible for not fulfilling any further essential contractual obligation.

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 purchaser 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 purchaser 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. The seller shall have absolute authority to retake, sell or otherwise deal with or dispose of all or any part of the goods in which title remains vested in the seller.

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 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 or 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 buyer shall examine the goods as required by German Law (§§ 377, 378 of the German Commercial Code) and in doing so check every delivery in any respect.

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. 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.

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 by or on behalf of the buyer unless such warranty is given by the manufacturer to the seller.

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.

Any discharge from liability will be void if a defect results from a negligent or intentional breach of contract on the part of the seller. The same applies if the seller may be held responsible for the breach of any further essential contractual obligation.

Any claim by the buyer which is based on any defect in the quality or condition of the goods or their failure to correspond with specification shall be notified to the seller within six months from the date of delivery. The buyer is entitled to demand the delivery of any substitute goods, or repair or a reduction of the purchase price as set forth with the term of each individual contract of sale.

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 a cancellation of the contract.

## **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 to 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. Force Majeure**

10.1. Neither party shall be in breach of a contract / order nor liable for delay in performing or failure to perform any of its obligations under it if such a delay or failure results from events, circumstances or causes beyond its reasonable control ("Force Majeure Event"). A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions. Should the Force Majeure Event exceed a continuous period of 90 days, then either party may at any time thereafter, and provided performance is still excused, give written notice to the other to terminate the Contract.

10.2. The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

10.3. If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 90 Days, the Buyer may terminate the Contract immediately by giving notice in writing to the Supplier. Any sums paid by the Buyer to the Supplier will be returned without deduction and/or delay.

## **11. Choice of Law; Place of Jurisdiction**

This agreement shall be governed by and construed in accordance with German Law and each party agrees to submit to the jurisdiction of the courts having jurisdiction for the seller.

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 according to any national or international law.

TMQS GmbH