

Terms and Conditions of Sale and Delivery

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:

- merchants, if the contract pertains to commercial operations;
- legal entities and legal entities with special investment assets under public law.

I. Tender

Documents belonging to the tender, such as illustrations, drawings and specifications are only approximately relevant, in so far as they are not expressly stated as mandatory.

II. Scope of Delivery

The written confirmation of an order from the supplier details exactly what is to be supplied and applies especially in the case of verbal exchanges and communication by telephone, as well as for agreements made by representatives. In the case of tender made by the supplier with time limitations and delivery within the period stipulated, the tender is applicable in as far as confirmation of contract has not been presented on time. Supplementary agreements and changes require the supplier's written confirmation.

III. Price and Payment

- 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 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 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.
- Owing to the absence of a special agreement, the prices are quoted ex works; this includes loading of goods on site, however applies to packing only. Value added tax is calculated into the price according to prevailing statutory requirements.
- Payment of the invoice is in each case to take place as indicated in the confirmation of order or invoice. Payment shall be effected by interbank payment transaction only; no cheque or bill of exchange will be considered as fulfillment of the payment obligation. Payments to our representatives are only to be carried out where verified authority to collect is in force.
- Should the credit period be exceeded, the costs and interest, which the banks charge for uncovered credit, will be calculated.
- It is not permissible to hold back payments or to charge for possible counterclaims the purchaser may have, which the supplier disputes.
- A handling charge will be invoiced for returned items of stock, for which we are not at fault.

IV. Delivery Times

- The delivery date begins as soon as the confirmation of order is dispatched, not however before the purchaser produces all the necessary documents, approvals and releases, and not before receipt of the agreed sum.
- The delivery date is complied with when, before its time limit has expired, the item to be delivered has left the works or the purchaser has been informed that the item is on delivery stand-by.
- The delivery date is extended appropriately in the case of labour disputes, in particular during strikes and lockout, as well as in the event of unforeseeable obstacles that arise beyond the supplier's control, in so far as such obstacles are proven to be of substantial influence on the production or delivery of the item. This also applies if these circumstances arise for subcontracting suppliers. In addition, the aforementioned circumstances need not be justified if they arise during an already existing delay. In important cases, the supplier will inform the purchaser of the beginning and end of such obstacles as soon as possible.
- If losses incur for the purchaser as a result of a delay caused by the supplier, he or she is then entitled to demand loss compensation for the delay, regardless of any other claims. This amounts to 1/2 per cent for each full week delayed, in total, however 5 per cent at the most of the value of that part of the total delivery, which cannot be deployed in time or not according to the contract as a result of the delay.
- If shipping is delayed at the purchaser's request, the supplier is entitled to, after an appropriate period of time has been set and has elapsed unsuccessfully, dispose of the object to be delivered for other purposes, and to supply the purchaser with a reasonable extension of time.
- Compliance with terms of delivery presupposes the fulfilment of the contract obligations by the purchaser.

V. Passage of Risk after Receipt

- Risk is transferred onto the purchaser no later than when the parts to be delivered are sent out, indeed also when partial deliveries take place or the supplier has assumed responsibility for other services, e.g. forwarding expenses or transportation and installation. At the purchaser's request and at the supplier's own cost, deliveries can be insured against theft, breakages, damages in transit, loss due to fire, and water damage as well as against other insurable risks.
- If dispatch is delayed as a result of circumstances for which the purchaser is liable, the passing of risk is relinquished to the purchaser as from the date of delivery stand-by; however, the supplier is obliged to effectuate the insurance at the purchaser's request and cost, as is required.
- Delivered articles are, even if they indicate merely insignificant flaws, to be accepted by the purchaser, irrespective of the rights as stipulated in paragraph VII.
- Partial deliveries are permissible.
- In the case of custom-made products, deliveries in excess of or those that fall short of 10% may not be rejected.

VI. Reservation of Proprietary Rights

- The supplier reserves the proprietary rights to the article to be delivered, until all accounts payable resulting from the business relationship are settled, including future receivables arising from contracts taken out either simultaneously or thereafter. This also applies if singular or all accounts payable to the supplier are incorporated into an ongoing invoice and the balance is struck and accepted.

If the purchaser acts contrary to the terms of contract, in particular regarding delays in payment, then the supplier is entitled to withdraw the article after a reminder has been issued and in turn, the purchaser is committed to return the article.

In the case of withdrawing or impounding the article, and in so far as the repayment law does not apply, rescission of the contract is only possible if the supplier states this expressly in writing. In the case of distraining items or other third-party interventions, the purchaser is to inform the supplier in writing immediately.

- The purchaser is entitled to resell the article in the respectable course of business. Other decrees, such as pledging or cession by security, are not permitted for the purchaser. The purchaser is obliged to resell the article only subject to reservation of property rights, if the third buyer does not immediately pay for the article. Authorization for further sale ceases to apply if the purchaser suspends payment. The purchaser already relinquishes at this point all demands to the supplier, which accrue for the buyer or third party from further sale, regardless of whether the goods delivered under retention of title is resold without or after further processing. The purchaser is not permitted to meet up with the buyer, as this could in any way lead to exclusion or impairment of the supplier's rights. In particular, the purchaser may not enter into any agreements, which nullify or influence the relinquishment in advance of demands on the supplier. The purchaser is still authorized to collect debts transferred onto the supplier even after these have been relinquished. The authority of the supplier to collect the debts themselves will remain unaffected; however, the supplier agrees not to collect debts as long as the purchaser fulfils payment obligations correctly. The supplier can demand that the purchaser notifies him or her of the relinquished debts and their debtors, provides all the necessary specifications required for collection, hands over the corresponding documents and informs the debtors of the assignment of debts. If the article to be delivered is resold along with other items, which do not belong to the supplier, then the demands of the purchaser against the debtor amounting to the delivery price agreed between supplier and purchaser are considered relinquished.

- The purchaser will always carry out any processing or reorganization of the goods delivered under retention of title for the supplier. If the goods delivered under retention of title are processed along with other objects not belonging to the supplier or become inseparably amalgamated, then the supplier acquires co ownership of the new item in relation to the value of the goods delivered under retention of title to the other processed or amalgamated articles at the time of processing or amalgamation. If supplier's goods are combined with other movable objects to form a single item or become inseparably amalgamated, and if the other item is to be considered as the main object, then it is deemed as agreed that the purchaser transfers proportional co ownership onto the supplier, in so far as the main object belongs to him or her. The purchaser safe keeps the property or joint property for the supplier. For the item resulting from processing or joining as well as amalgamating items, the same conditions apply as with the goods delivered under retention of title.

- The supplier commits him- or herself to releasing the securities, which he or she is entitled to, in so far as the value of the demands to be secured does not exceed more than 25%, assuming these have not yet been settled.

The supplier's reservation to property rights is conditional in that along with full payment of receivable accounts, property rights of the reservation article are automatically transferred onto the purchaser and he or she is entitled to the relinquished demands.

The reservation of property rights and those pertaining to the securities to which the supplier is entitled, apply until complete exemption from contingent liabilities, which the supplier may have entered to in the interest of the purchaser.

- The supplier reserves the right to insure the delivery item against theft, breakages, damages in transit, loss due to fire, and water damage as well as against other insurable risks, at the purchaser's own cost and only in so far as the purchaser has not already demonstrated having taken out such insurance.

VII. Liability for Faulty Deliveries

Regardless of other claims, the supplier is liable for all faulty deliveries, including the absence of specifically assured features, irrespective of paragraph IX. 4. as follows:

- All parts are to be repaired or redelivered free of charge at proper discretion and subject to the choice of the supplier, which emerge as either unusable or significantly impaired within 6 months (within 3 months in the case of multi-shift operations) of commissioning, as a result of circumstances occurring before the passage of risk – this refers in particular to incorrect design, poor building materials or bad workmanship. Should such faults be ascertained, the supplier should be immediately informed thereof in writing. Replaced parts become property of the supplier.
- If shipping, installation or commissioning is delayed through no fault of the supplier, liability expires 12 months at the latest after the passing of risk.
- For essentially externally manufactured items, the supplier's liability is limited to relinquishment of the liability claims, to which he or she is entitled to from the supplier of the foreign material.
- The supplier's right to assert claims for faults expires in all cases 6 months from the point that the reprimand is made, at the earliest however, when the guarantee period runs out.
- No guarantee can be provided for damages resulting for the following reasons:
 - Unsuitable or improper use, incorrect assembly or commissioning by the purchaser or third party respectively, natural wear and tear, incorrect or negligent treatment, unsuitable resources, unsuitable building ground, chemical, electrochemical or electrical influences, in so far as blame can not be attributed to the supplier.
- After the supplier has received notification, the purchaser must allow the required amount of time and the opportunity for the supplier to carry out all repairs and replacement deliveries that appear to be necessary at proper discretion, otherwise the supplier is exempt from the liability for defects. Only in urgent cases where industrial safety is endangered or as a defence against disproportionately large damages, of which the supplier is to be immediately informed, or if the supplier is in arrears with eliminating faults, then the purchaser reserves the right to eliminate the error him- or herself or to have this done by a third party, and then to demand reimbursement of the necessary costs incurred.
- The direct costs resulting from repairs or replacement deliveries are to be borne by the supplier – in so far as reclamation emerges as justified – and the costs of replacement parts, as well as the appropriate costs of removal and reinstallation, and furthermore, if this can be demanded by rights in an individual case, the costs of providing filters and assistants where necessary. The purchaser bears the costs for the remainder.
- The guarantee period for replacement parts or corrections amounts to three months, however this must continue at least until the original guarantee for the delivery article has expired. The guarantee period for defects in the delivery article is extended for the length of time that operations are interrupted by repair work.
- Liability for the consequences of modifications or commissioning work that is undertaken by the purchaser or a third party either improperly or without prior permission from the supplier is annulled.
- Further claims by the purchaser, in particular claims for damages, which have not incurred directly to the delivery object, are not possible.
- The seller shall not be liable under this warranty if the total price for the goods has not been paid by the due date for payment.

This exclusion of liability does not apply for wilful or gross negligence on the part of the proprietor or executive, and for cases in which according to product liability laws, liability for faults in the delivery object is assumed for damages to persons or to privately used articles. In addition, this does not apply for the absence of features, which have been specifically guaranteed, if the warranty is only intended to secure the purchaser against damages, which have not incurred directly to the delivery object.

VIII. Liability for Additional Obligations

If, as a result of the supplier's negligence, the delivered item cannot be properly used by the purchaser according to contract stipulations, owing to faulty workmanship or failure to effect suggestions and consultation after the contract has been concluded, as well as other contractual obligations – in particular manuals for operation and maintenance of the item – then the regulations in paragraphs VII and IX apply correspondingly, under the exclusion of further claims by the purchaser.

IX. Purchaser's Right to Withdrawal and Other Supplier Liabilities

- The purchaser can withdraw from the contract, if it is definitely impossible for the supplier to provide the entire services before the passage of risk. The same applies with incapacity of the supplier. The purchaser can also withdraw from the contract if, with an order of similar articles, part of the delivery cannot be carried out according to the number required and he or she has a legitimate interest in refusing a partial delivery; if this is not the case, the purchaser can reduce service in return accordingly.
- If a delay in goods and services is in accordance with the delivery conditions in paragraph IV, and if the purchaser guarantees the supplier that is in arrears an appropriate period of grace, thereby expressly declaring that after this period expires, he or she will not accept the goods and if the deadline is not complied with, the purchaser is then entitled to withdraw from the contract.
- If incapacity occurs during default of acceptance or owing to the fault of the purchaser, then he or she remains obliged to reciprocate services.
- Moreover, the purchaser is entitled to withdraw from the contract if the supplier allows the adequately extended period to expire unsuccessfully, which has been granted in order that he or she may carry out corrections or replacement deliveries with regard to faults that have to be justified in terms of the delivery conditions. The purchaser's right to withdraw from the contract also prevails in other cases of the supplier's failure to correct faults or deliver replacement parts.
- All other extensive claims made by the purchaser are ruled out, in particular concerning cancellation of sale contracts, termination of contracts or reduction as well as claims for damages of all kinds, including all damages that do not incur directly to the delivery object. This exclusion of liability does not apply for wilful or gross negligence on the part of the proprietor or executive and for cases in which according to product liability laws, liability for faults in the delivery object is assumed for damages to persons or to privately used articles. In addition, this does not apply for the absence of features, which have been expressly guaranteed, if the warranty has only been intended to secure the purchaser against damages, which have not incurred directly to the delivery object.

X. 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.

XI. 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 this agreement. 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.

XII. EURO Ruling

The contracting parties are in agreement that payment obligations as laid down in the contract are not to be influenced by the introduction of the Euro. If the Euro becomes the official currency in Germany, the Eberhard brothers are entitled to both issue invoices and demand payment in either DM or in Euro, until the DM ceases to apply as legal tender, in so far a currency entering into the Euro has been stipulated. Payment obligations, in particular fixed currency values, are considered as effective in Euro, in so far as a currency entering into the Euro has been stipulated and as soon as the Euro is the sole legal form of payment in Germany. In all cases, conversion will take place on the basis of the officially fixed exchange rates. An understanding exists that conversion to Euro neither justifies termination, withdrawal or contestation rights, nor does it justify a right to modify contracts.