

## GENERAL CONDITIONS OF SALE (Goods and material)

*Based on International Chamber of Commerce General Conditions of Sale 2017*

### 1 GENERAL

**1.1** These General Conditions are intended to supplement the information listed in the offer or the order confirmation from the Seller to the Buyer or the signed agreement/contract between the Buyer and the Seller. In case of contradiction between these General Conditions and any Specific Conditions listed in a signed agreement/contract between the parties, the specific conditions shall prevail.

**1.2** In the absence of a signed contract/agreement, the Buyer and the Seller are considered to have entered a contractual relationship latest by the time that the Seller has started to take actions on preparing the supply to the Buyer. In the absence of a signed contract/agreement containing specific conditions for the sales and delivery of the goods, these General Conditions will apply.

**1.3** Any questions relating to the contract which are not expressly or implicitly settled by the provisions contained in the contract itself (i.e. these General Conditions and any specific conditions as per clause 1.1, shall be governed:

A. by the United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention of 1980, hereafter referred to as CISG), and

B. to the extent that such questions are not covered by CISG, by reference to the law of the country where the Seller has his main office.

**1.4** Any reference made to trade terms (such as EXW, FCA, etc.) is deemed to be made to the relevant term of the INCOTERMS published by the International Chamber of Commerce.

**1.5** Any reference made to a publication of the International Chamber of Commerce is deemed to be made to the version current at the date of conclusion of the Contract.

**1.6** No modification of the Contract or the contractual relationship is valid unless agreed or evidenced in writing. However, a party may be precluded by his conduct from asserting this provision to the extent that the other party has relied on that conduct.

### 2 CHARACTERISTICS OF THE GOODS

**2.1** It is agreed that any information relating to the goods and their use, such as weights, dimensions, capacities, prices, colors and other data contained in catalogues, prospectuses, circulars, websites, advertisements, illustrations, price-lists of the Seller, shall not take effect as terms of the contract unless expressly referred to in the Contract.

**2.2** Unless otherwise agreed, the Buyer does not acquire any property rights in software, drawings, etc. which may have been made available to him. The Seller also remains the exclusive owner of any intellectual or industrial property rights relating to the goods.

### 3 INSPECTION OF THE GOODS BEFORE SHIPMENT

If the parties have agreed that the Buyer is entitled to inspect the goods before shipment, the Seller must notify the Buyer within a reasonable time before the shipment that the goods are ready for inspection at the agreed place.

### 4. PRICE

**4.1** If no price has been agreed, the Seller' s current list price at the time of the conclusion of the Contract shall apply. In the absence of such a current price, the price generally charged for such goods at the time of the conclusion of the Contract shall apply.

**4.2** Unless otherwise agreed in writing, the price does not include VAT, and is not subject to price adjustment.

**4.3** The price listed in the offer, order confirmation or signed agreement includes any costs which are at the Seller' s charge, unless otherwise specified in any of the above documents. However, should the Seller bear any costs which, according to this Contract, are for the Buyer' s account (e.g. for transportation or insurance under EXW or FCA), such sums shall not be considered as having been included in the price listed in the offer, order confirmation or signed agreement and shall be reimbursed by the Buyer.

### 5 PAYMENT CONDITIONS

**5.1** Unless otherwise agreed in writing, or implied from a prior course of dealing between the parties, payment of the price and of any other sums due by the Buyer to the Seller shall be on open account and time of payment shall be 30 days from the date of invoice. The amounts due shall be transferred, unless otherwise agreed, to the Seller' s bank in the sellers country for the account of the Seller and

the Buyer shall be deemed to have performed his payment obligations when the respective sums due have been received by the Seller's bank in immediately available funds.

**5.2** If the parties have agreed on payment in advance, without further indication, it will be assumed that such advance payment, unless otherwise agreed, refers to the full price, and that the advance payment must be received by the Seller's bank in immediately available funds at least 30 days before the agreed date of delivery or the earliest date within the agreed delivery period. If advance payment has been agreed only for a part of the contract price, the payment conditions of the remaining amount will be determined according to the rules set forth in this article.

**5.3** If the parties have agreed on payment by documentary credit, then, unless otherwise agreed, the Buyer must arrange for a documentary credit in favor of the Seller to be issued by a reputable bank, subject to the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce, and to be notified at least 30 days before the agreed date of delivery or at least 30 days before the earliest date within the agreed delivery period. Unless otherwise agreed, the documentary credit shall be payable at sight and allow partial shipments and transshipments.

**5.4** If the parties have agreed on payment by documentary collection, then unless otherwise agreed, documents will be tendered against payment (D/P) and the tender will in any case be subject to the Uniform Rules for Collections published by the International Chamber of Commerce.

**5.5** To the extent that the parties have agreed that payment is to be backed by a bank guarantee, the Buyer is to provide, at least 30 days before the agreed date of delivery or at least 30 days before the earliest date within the agreed delivery period, a first demand bank guarantee subject to the Uniform Rules for Demand Guarantees published by the International Chamber of Commerce, or a standby letter of credit subject either to such Rules or to the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce, in either case issued by a reputable bank.

## **6 INTEREST IN CASE OF DELAYED PAYMENT**

**6.1** If a party does not pay a sum of money when it falls due the other party is entitled to interest upon that sum from the time when payment is due to the time of payment.

**6.2** Unless otherwise agreed, the rate of interest shall be 2% above the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place of payment, or where no such rate exists at that place, then the same rate in the State of the currency of payment. In the absence of such a rate at either place the rate of interest shall be the appropriate rate fixed by the law of the State of the currency of payment.

## **7 RETENTION OF TITLE**

**7.1** If the parties have validly agreed on retention of title, the goods shall remain the property of the Seller until the complete payment of the price, or as otherwise agreed in writing.

**7.2** In the case of significantly delayed or ceased payments, the Seller reserves the right to repossess sold, loaned or leased goods delivered to the Buyer or to a third Party on the Buyer's behalf. This paragraph further applies to already installed goods whether the installation has been carried out by the Buyer, the Seller or a third Party as long as the repossession does not result in damage to the Buyer's property or installation or any such owned by a Customer of the Buyer.

## **8 CONTRACTUAL TERM OF DELIVERY**

Unless otherwise agreed, delivery shall be "Ex Works" (EXW).

## **9 SHIPPING DOCUMENTS**

Unless otherwise agreed, the Seller must provide the documents (if any) indicated in the applicable Incoterm or, if no Incoterm is applicable, according to any previous course of dealing.

## **10. INTELLECTUAL PROPERTY RIGHTS**

**10.1** The Seller is unable to guarantee that no patent rights, copyrights, trademarks, (user) rights, trade models or any other rights of third-parties are infringed by goods received from suppliers and/or buyers via the Seller or third-parties via them, including but not limited to goods, models and drawings for the manufacture and/or delivery of certain Products.

**10.2** In the absence of written agreement to the contrary, the Seller holds the copyrights and all rights of (industrial) property to the offers it has made and the designs, images, drawings (test) models, software, templates and other goods that it has issued.

## **11. CONFIDENTIAL INFORMATION**

All non-public, confidential or proprietary information of the Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by the Seller to the Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" is confidential, solely for the use of performing this Contract and may not be disclosed or copied unless authorized in advance by the Seller in writing. Upon the Seller's request, the Buyer shall promptly return all documents and other materials received from the Seller.

## **12 LATE DELIVERY, NON-DELIVERY AND REMEDIES THEREFOR**

**12.1** When there is delay in delivery of any goods, the Buyer is entitled to claim liquidated damages equal to 0.5% or such other percentage as may be agreed of the price of those goods for each complete week of delay, provided the Buyer notifies the Seller of the delay. Where the Buyer so notifies the Seller within 15 days from the agreed date of delivery, damages will run from the agreed date of delivery or from the last day within the agreed period of delivery. Where the Buyer so notifies the Seller after 15 days of the agreed date of delivery, damages will run from the date of the notice. Liquidated damages for delay shall not exceed 5 % of the price of the delayed goods or such other maximum amount as may be agreed.

**12.2** If the parties have agreed upon a cancellation date in a signed agreement, the Buyer may terminate the contract by notification to the Seller as regards goods which have not been delivered by such cancellation date for any reason whatsoever (including a force majeure event).

**12.3** When article 12.2 does not apply and the Seller has not delivered the goods by the date on which the Buyer has become entitled to the maximum amount of liquidated damages under article 12.1, the Buyer may give notice in writing to terminate the contract as regards such goods, if they have not been delivered to the Buyer within 5 days of receipt of such notice by the Seller.

**12.4** In case of termination of the contract under article 12.2 or 12.3 then in addition to any amount paid or payable under article 12.1 the Buyer is entitled to claim damages for any additional loss not exceeding 10% of the price of the non-delivered goods.

**12.5** The remedies under this article are exclusive of any other remedy for delay in delivery or non-delivery.

## **13 NON-CONFORMITY OF THE GOODS**

**13.1** The Buyer shall examine the goods as soon as possible after their arrival at destination and shall notify the Seller in writing of any lack of conformity of the goods within 15 days from the date when the Buyer discovers or ought to have discovered the lack of conformity. In any case the Buyer shall have no remedy for lack of conformity if he fails to notify the Seller thereof within 12 months from the date of arrival of the goods at the agreed destination.

**13.2** Goods will be deemed to conform to the contract despite minor discrepancies which are usual in the particular trade or through course of dealing between the parties but the Buyer will be entitled to any abatement of the price usual in the trade or through course of dealing for such discrepancies.

**13.3** Where goods are non-conforming (and provided the Buyer, having given notice of the lack of conformity in compliance with article 13.1, does not elect in the notice to retain them), the Seller shall at his option:

- (a) replace the goods with conforming goods, without any additional expense to the Buyer, or
- (b) repair the goods, without any additional expense to the Buyer, or
- (c) reimburse to the Buyer the price paid for the nonconforming goods and thereby terminate the contract as regards those goods.

The Buyer will be entitled to liquidated damages as quantified under article 12.1 for each complete week of delay between the date of notification of the non-conformity according to article 13.1 and the supply of substitute goods under article 13.3 (a) or repair under article 13.3 (b) above. Such damages may be accumulated with damages (if any) payable under article 12.1, but can in no case exceed in the aggregate 5% of the price of those goods.

**13.4** If the Seller has failed to perform his duties under 13.3 by the date on which the Buyer becomes entitled to the maximum amount of liquidated damages according to that article, the Buyer may give notice in writing to terminate the contract as regards the non-conforming goods unless the supply of replacement goods or the repair is effected within 5 days of receipt of such notice by the Seller.

**13.5** Where the Contract is terminated under article 13.3 (c) or article 13.4, then in addition to any amount paid or payable under art.13.3 as reimbursement of the price and damages for any delay, the

Buyer is entitled to damages for any additional loss not exceeding 10% of the price of the non-conforming goods.

**13.6** Where the Buyer elects to retain non-conforming goods, he shall be entitled to a sum equal to the difference between the value of the goods at the agreed place of destination if they had conformed with the Contract and their value at the same place as delivered, such sum not to exceed 15% of the price of those goods.

**13.7** Unless otherwise agreed in writing, the remedies under this article 13 are exclusive of any other remedy for nonconformity.

**13.8** Unless otherwise agreed in writing, no action for lack of conformity can be taken by the Buyer, whether before judicial or arbitral tribunals, after 2 years from the date of arrival of the goods. It is expressly agreed that after the expiry of such term, the Buyer will not plead non-conformity of the goods, or make a counterclaim thereon, in defense to any action taken by the Seller against the Buyer for non-performance of this Contract.

#### **14 COOPERATION BETWEEN THE PARTIES**

**14.1** The Buyer shall promptly inform the Seller of any claim made against the Buyer by his customers or third parties concerning the goods delivered or intellectual property rights related thereto.

**14.2** The Seller will promptly inform the Buyer of any claim which may involve the product liability of the Buyer.

#### **15 FORCE MAJEURE**

**15.1** A party is not liable for a failure to perform any of his obligations in so far as he proves

(a) that the failure was due to an impediment beyond his control, and

(b) that he could not reasonable be expected to have taken the impediment and its effects upon his ability to perform into account at the time of the conclusion of the contract, and

(c) that he could not reasonably have avoided or overcome it or its effects.

**15.2** A party seeking relief shall, as soon as practicable after the impediment and its effects upon his ability to perform become known to him, give notice to the other party of such impediment and its effects on his ability to perform. Notice shall also be given when the ground of relief ceases. Failure to give either notice makes the party thus failing liable in damages for loss which otherwise could have been avoided.

**15.3** Without prejudice to article 12.2, a ground of relief under this clause relieves the party failing to perform from liability in damages, from penalties and other contractual sanctions, and from the duty to pay interest on money owing, as long as and to the extent that the ground subsists.

**15.4** If the grounds of relief subsist for more than six months, either party shall be entitled to terminate the contract without notice.

#### **16 RESOLUTION OF DISPUTES**

**16.1** Unless otherwise agreed in writing, all disputes arising in connection with the present contract shall be finally settled under the Rules of Arbitration of the country where the Company is registered.

**16.2** An arbitration clause does not prevent any party from requesting interim or conservatory measures from the courts.