

Standard Terms and Conditions of Trade, Delivery and Payment for Export

Revision as per April 1st, 2003

I. Legal effectiveness and binding force of the standard terms and conditions of trade, delivery and payment

1. Our standard terms and conditions of trade, delivery and payment set forth herein (referred to herein as the "**Standard Terms**") shall be part of all offers and agreements concerning our deliveries and services, including all current and future business relations.
2. Clauses which deviate from our Standard Terms as well as any standard terms and conditions of purchase shall only be binding if and to the extent that we have confirmed these in writing. At the latest our Standard Terms shall be deemed accepted upon acceptance of our delivery or services.

II. Offers

1. Our offers are subject to change without notice unless explicitly marked as binding. Oral or written orders shall be deemed accepted by us upon our issuing of a written order confirmation or the delivery of the goods within a reasonable time period.
2. Statements made by us in advertisements, attachments to offers such as illustrations, drawings, information on weights and measures, descriptions of performance and properties as well as other information concerning our products and services are only approximations, unless explicitly specified in writing in the offer as contractually agreed upon property of our products and services. The statements made in our offer on the contractually agreed property shall not constitute a guaranty unless we have explicitly described these statements as "guaranteed" in writing.
3. We reserve the proprietary rights and copyrights as regards preliminary estimates of cost, drawings and other documents; these may not be made accessible to third parties without our prior written consent.

III. Scope and specification of delivery

1. As far as the scope of a delivery is concerned our written order confirmation shall be binding; however in the event of binding offers with timely acceptance the offer shall be binding even if there is no timely order confirmation. Ancillary

agreements, changes and modifications must be confirmed by us in writing to be valid.

2. The Customer shall guaranty the accuracy of its statements, plans and other information as well as the lawfulness of their use. We shall not be obliged to ascertain this. Such information shall only be part of the agreement if explicitly agreed upon in writing.

IV. Prices

1. Price lists and other general price information is subject to change without notice.
2. Unless agreed otherwise prices shall be ex works (EXW, Incoterms 2000). They do hence not include installation and/or assembly and/or packaging. Value-added tax and/or customs duties or other indirect charges and levies are also not included.
3. If upon the request of the Customer the delivery is made more than 3 months from the date of the order confirmation we shall have the right, if our wage and materials costs have increased in the meantime, to charge our new list prices.

V. Conditions of payment

1. Invoices must be paid net cash within 30 days from the invoice date. If payment is received within 14 days from the date of the invoice we shall grant a 2 per cent discount on the ex works value of the goods supplied excluding spare parts and repair works as well as other services.
2. The acceptance of bills of exchange is at our discretion and shall in any case be considered as payment only upon the full discharge and payment of the bill of exchange, and shall also in any case be free from expenses for us; the same shall apply to bank cheques. Regardless of the acceptance of bills of exchange we shall have at all times the right to demand payment of our original claim in return for the release from the liability under the bills and notes payable.
3. If payment terms have been exceeded the following shall apply: In in the event of overdue payments or suspension of payments, all open liabilities including those not yet due at the time are payable immediately without any deduction. This shall apply even if a postponement of payments has been granted for preceding cases. All overdue payments shall bear interest at a rate of 8 per cent per year above the applicable base lending rate of the European Central Bank.
4. The Customer shall have the right to retain payments or to set them off against counterclaims only if its counterclaims are undisputed or have been confirmed by a judgment which cannot be appealed against.

VI. Time of deliveries and services

1. Periods and dates shall be binding if we have explicitly confirmed them as binding. They commence only upon receipt of all services and information to be provided by the Customer.
2. The period is deemed to have been kept:
 - a) Upon delivery ex works (EXW, Incoterms 2000) without installation and/or assembly if we have advised the Customer of the goods' readiness for shipment or collection within the agreed performance or delivery period. If the delivery is delayed for reasons for which the Customer is responsible, the time and date of delivery shall be considered postponed for the period caused by such delay.
 - b) If by exception delivery including installation and/or assembly has been agreed upon, if these have been conducted within the period agreed.
3. If non-compliance of the period is proven to be the result of mobilisation, war, riot, strike, lockout or the occurrence of unforeseen events, which are beyond our reasonable control, the time and date of delivery shall be adequately extended.
4. If the time and date has been exceeded due to our gross negligence, Customer shall have the right to compensation of proven damage up to the maximum amount of the value of the individual delivery or service. This shall not affect the right of Customer to rescind the agreement. Other damage claims and/or rights of Customer shall be excluded in all cases of delay, even upon expiry of any extension granted to Customer.
5. If the dispatch or delivery is delayed at the request of Customer storage charges can be invoiced in the amount of ½ of a percent of the invoiced amount for each month begun, commencing one month after readiness for shipment has been advised; storage charges are limited to 5 percent unless higher costs are proven.

VII. Passage of risk and acceptance

1. In accordance with the ex works (EXW, Incoterms 2000) clause, risk shall pass to Customer at the latest upon the tender of the goods to be delivered to the transporting company; this shall also apply if partial deliveries are conducted or if we have assumed additional services such as cost of shipment or delivery.
2. If a delivery is delayed due to circumstances for which Customer is responsible, risk shall pass to Customer from the day of readiness for shipment; we shall however upon the request and at the cost of Customer underwrite the insurance demanded by Customer.
3. Delivered goods must even in case of non-essential defects be accepted by Customer notwithstanding the rights under section IX, subsection 1.

4. Partial deliveries are admissible.
5. In the absence of a differing agreement Customer's acceptance shall be requested at our discretion either at our delivery plant or at the place of destination. If Customer does not comply with this request within a reasonable period the goods shall be deemed accepted. The cost of the acceptance shall be borne by Customer, except for extra expenses due to failure to meet the contractually agreed performances standard.
6. The aforementioned provisions on passage of risk shall also apply if works on the goods to be delivered still have to be carried out at Customer's plant, in particular assembly works, or if in accordance with the agreement acceptance is to take place there. This shall not affect our obligation to unconditional completion of the delivery item.

VIII. Installation or assembly

In the event that we have accepted to conduct the installation and/or assembly the following provisions shall apply:

1. Customer shall pay to us the rates for work time and surcharges for extra work, night work, Sunday work or work on public holidays, for works under aggravated circumstances as well as for planning and supervision. Time used for preparation, travel, reporting back and waiting periods outside our responsibility shall be considered working hours.
2. In addition the following costs shall be reimbursed: Travel expenses, cost for the transport of tools and personal luggage.
3. In case of assembly at the Customer's premises we shall at no charge be supplied with adequate space as well as electricity, lifting equipment, assistance personnel etc.
4. If installation, assembly and/or start of operation is delayed through no fault of ours, Customer shall bear all costs for standby time and additionally necessary travels of the assembly personnel.

IX. Warranty, liability for defects

We shall be liable for material and legal defects only according to the following provisions:

1. All those goods and/or services shall at our discretion and at no cost be repaired, newly delivered or newly performed which, within 12 months from the date of passage of risk and due to circumstances prior to passage of risk – which shall

- be proven by competent evidence- are unfit for use or substantially impaired in their usability, in particular owing to defective construction, bad materials or inadequate performance. Customer shall advise us without delay in writing of any defects which Customer becomes aware of.
2. To the extent that an total running time (in hours) has been agreed upon for the delivery good and the agreed upon running time is completed prior to the expiration of the warranty period in accordance with sections 1 and 4 hereof, the liability for breach of warranty shall end on the date when the agreed total running time has been completed.
 3. Customer must allow the necessary time and opportunity required at our reasonable discretion to remedy any defects. If this is refused to us we shall be exempt from liability.
 4. The statute of limitations for claims arising from defects shall be 12 months from the date of passage of risk.
 5. The warranty period shall run anew for replaced or repaired parts and shall last (i) 6 (six) months from the date of replacement, completion of repair and/or from acceptance, or (ii) until the end of the 12 month period stipulated in subsection 4 above, it being understood that the period which expires last shall control.
 6. No warranty shall be provided for unsuitable and/or improper use, defective assembly and/or improper installation and/or dismantling and/or start of operation by Customer and/or third parties, natural wear and tear due to ageing or waste (for instance of cables etc), defective or negligent treatment, in particular due to the omission of the required regular lubrication and maintenance, and/or from the use of inadequate machines and equipment or replacement materials by Customer and/or third parties, defective preliminary work of all kinds, chemical, electrochemical and/or electric influences. However, this warranty shall apply if any of the foregoing is due to our fault.
 7. For deliveries and services from subcontractors designated by Customer, we shall provide warranty only within the scope of warranty obligations of the subcontractors concerned.
 8. **CUSTOMER SHALL HAVE NO RIGHTS AND CLAIMS EXCEPT FOR THOSE EXPLICITLY MENTIONED IN SECTIONS IX. SUB-SECTIONS 1 TO 7 HEREOF FOR DEFECTS IN MATERIALS, CONSTRUCTION OR PERFORMANCE AS WELL AS FOR THE ABSENCE OF GUARANTIED QUALITIES.**
 9. For claims of Customer due to faulty advice and the like, or due to violation of any accessory obligations, we shall be liable only in case of intent or gross negligence.

X. Failure to perform, defective performance and their consequences

1. In all cases of defective performance or failure to perform at all not explicitly addressed in these Standard Terms, in particular if we start the performance of deliveries and/or services without reason so late that a punctual completion can no longer be anticipated and/or an execution in breach of contract attributable to our fault must be anticipated with certainty, and/or if deliveries and/or services have been performed by us in breach of contract, Customer shall have the right with regard to the goods and/or services concerned to grant us a reasonable extension combined with a warning to rescind the agreement in the event that the defects are not cured within the extension period. In case this extension expires without the defect having been cured due to our fault, Customer shall have the right as regards deliveries and services executed in breach of contract, or whose execution in breach of contract must be anticipated with certainty, to rescind the agreement and to claim the restitution of payments already made which are attributable to this.
2. In this event the provisions of section XI shall apply as regards a potential claim for damages by Customer to the exclusion of additional liability. The claim for damages shall be limited to 10 per cent of the ex works purchase price of the deliveries and/or services for which the rescission is made.

XI. Exclusion of additional liabilities

All claims by Customer shall be excluded except for those explicitly mentioned in these Standard Terms, regardless of their legal basis, in particular any claims for damages, reductions of the price or withdrawal from the agreement. There shall be no claims by Customer for compensation of damages which have not arisen in the delivery item itself, such as loss or production, losses of usage, loss of orders, lost profits as well as other direct or indirect damages. These limitations shall not apply in case of intent or gross negligence of those persons whom we use to discharge our obligations.

XII. Title reserve

1. We shall retain title to the goods delivered until the purchase price has been paid and all claims existing from the business relationship and those still to arise in connection with the item of purchase as well as all claims arising in the future while we still have title have been settled; this shall also apply if individual claims are included into a current account by us and the balance is drawn and accepted.

2. If Customer is in default of payment (section V subsection 3 hereof) we shall have the right to repossess the title reserved goods and Customer shall be obliged to surrender them.
3. If a title reserved good of Customer is processed into a new mobile good, the processing shall be for our account without creating any obligations for us. We shall have title in the new mobile good. In case of processing, mixing or blending with goods in which we do not have title, we shall acquire joint title in the new good according to the proportion of the value of our title reserved goods to the overall value. If a title reserved good is sold by Customer in the ordinary course of business, Customer shall always transfer the corresponding accounts receivable to us.
4. Customer shall have the right and authority to resell, further process, or install, the title reserved goods only within the ordinary, regular course of business and on condition that claims within the meaning of subsection 3 actually transfer to us. Customer shall not have the right to dispose of title reserved goods otherwise, in particular the right to pledge or to transfer them as a security shall be excluded.
5. We authorize Customer to collect claims ceded in accordance with section 3; we reserve the right to revoke this authorization. We shall make no use of our own powers of collection as long as Customer meets its payment obligations, including those due to third parties. Customer shall upon request disclose the debtors of claims transferred to us and notify them of the transfer; we shall also have the right to notify debtors of the transfer ourselves.
6. Customer shall immediately notify us of enforcement proceedings by third parties as far as title reserved goods or transferred claims are concerned, providing all documents necessary for us to intervene in that process to reserve our rights. Intervention costs shall be reimbursed to us by Customer.
7. The right to resell, use or install title reserved goods and the right to collect transferred claims shall expire upon suspension of payment, application to, or opening of, insolvency proceedings and/or composition proceedings as well as in case of a protest of a bill of exchange or cheque.
8. To the extent that the value of the securities granted exceeds claims by more than 20 per cent we shall be obliged to retransfer or release securities at our discretion. With the settlement of all claims from the business relationship the title in the title reserved goods and the transferred claims shall pass to Customer.
9. Customer shall be obliged to co-operate to the extent necessary to protect our title; Customer in particular shall authorize us upon closure of the agreement to execute the entry or registration of the title reserve at the expense of Customer in public registers, books and the like in accordance with the national laws concerned and to fulfil all formalities related thereto.

XIII. Special terms

If the scope of delivery includes software Customer shall have a non exclusive right to use the delivered software including its documentation. The software is supplied for the exclusive use on the delivery item designated for it. The designation of the manufacturer and © signs shall not be removed or changed without our permission. Moreover all rights in the software shall remain with us or the software supplier. Sublicenses shall not be granted.

XIV. Final provisions

1. The contractual relationship between ourselves and the Customer shall be subject to Swiss law. The United Nations Convention on the International Sale of Goods (CISG) and choice-of-law rules shall be excluded.
2. In the event that one or several of the provisions contained in these Standard Terms are or become invalid, this shall not affect the effectiveness and validity of the remaining provisions.
3. Place of execution for all deliveries (including free of charge deliveries) is our respective production plant.
4. Place of jurisdiction shall be the court of our statutory seat. We shall however have the right to take legal action at the statutory seat of Customer.