

# Sales and delivery conditions 07/2002

## I. General points

- All deliveries and services are subject to these conditions as well as to any special contractual agreements. The acceptance of an order placed by the ordering party does not imply that purchasing terms and conditions on the part of the ordering party at variance with these conditions become contractually binding. In the absence of any special agreement to the contrary, contracts come into force when we confirm acceptance of the order, in writing.
- We reserve ownership and copyright rights in respect of samples, cost estimates, drawings and information in both tangible and intangible form (including electronically stored information). Such information must not be made available to third parties. We undertake to provide third parties access to information and documents described as "confidential" by the ordering party only with the agreement of the ordering party.

## II. Prices

- The prices applicable on date of delivery will be the prices charged.
- The prices are net, ex works, and include statutory VAT only if the same is separately shown.
- Incidental expenses such as packaging costs, transport and insurance costs, are not included in the prices.

## III. Payment terms

- If not expressly otherwise agreed, our invoices are to be paid in full, in the currency stated therein and within 30 days of invoice date.
- In event of the payment deadline not being met, default status will be automatic, without reminder. In such cases we are entitled to demand statutory interest on arrears. If we should find ourselves in a position to prove that the payment default has occasioned us even greater loss, then we are entitled to assert a claim for such. However, the ordering party is entitled to prove that the payment default has occasioned us no loss, or considerably less loss. We are also entitled to demand interest on the invoiced amounts at the level mentioned above if payments are deferred.
- We reserve the right to refuse to accept bills of exchange and cheques. If such are accepted, then this will only be on account of payment. Bills of exchange must always be surrendered immediately upon receipt of invoice. The ordering party is to bear the costs of discounting and collecting. We provide no guarantee concerning timely presentation and protestation. No cash account is granted if payment is made in the form of bills of exchange.
- Payment is only deemed to have been made once we are finally availed of power of disposal in respect of the money concerned.
- If the ordering party should be more than 14 days in arrears with payment then all our claims in respect of all contracts currently in existence with the ordering party will become immediately due for payment. Deferrals and other payment delays – also when bills are accepted – end. We are entitled to demand advance payment or the provision of security in respect of goods not yet delivered. Goods which we have already delivered but which are still our property are to be immediately surrendered at our request.

## IV. Delivery period, late delivery

- The delivery period is stated in the agreements between the parties to the contract. We will adhere to this provided that all commercial and technical matters have been agreed by the parties to the contract and provided that the ordering party has met all his obligations, such as furnishing the required official certificates or authorisations, or if a down-payment has been made. If not, then the delivery period will be appropriately extended. This does not apply if we are answerable for the delay.
- Adherence to the delivery period will be subject to that we ourselves be supplied correctly, and on time. We will inform of any likely delays as quickly as possible.
- The delivery period will be deemed adhered to when the article of sale has left our factory before the delivery period has expired or if we have provided notification that the article of sale is ready for dispatch. If final acceptance is to take place, then the date of final acceptance is what counts (except in cases where final acceptance is refused for justifiable reasons), or, alternatively, the date of notification of preparedness for final acceptance.
- If dispatch or final acceptance of the article of sale concerned is delayed for reasons for which the ordering party is answerable, then this party will be charged the costs resulting from the delay, starting one month from the time of notification that the article of sale is ready for dispatch / ready for final acceptance.
- If the delivery period cannot be adhered to for reasons of force majeure, industrial dispute or other event outside our control, then the delivery period will be appropriately extended. We will inform the ordering party, as soon as possible, of the start or end of any such.
- The ordering party can withdraw from the contract without notice if it becomes entirely impossible for us to fulfil our entire obligations prior to transference of risk. In addition, the ordering party can withdraw from the contract if, when an order is placed, it becomes impossible to deliver part of the order and if the ordering party has a justifiable interest in declining a partial delivery. If this is not the case then the ordering party must pay the contract price pertaining to the partial delivery. The same applies if we are unable to comply. Section VIII.2 otherwise applies. If it becomes impossible to fulfil the contract or if there is any inability to comply during the default in acceptance period, or if the ordering party is solely or mainly responsible for these circumstances, he is still obliged to pay.
- If we should be in default, the ordering party is entitled to compensation 0.5 % for every complete week of default (but to no more than 5 %) of the price of the part of the delivery not able to be used on time or as per contract as a consequence of the delay – **as long as he provides a convincing case that he has accrued losses of at least this amount.**  
If we should be in default and the ordering party extends us (giving consideration to the exceptions for which the law provides) a suitable deadline and we fail to meet it, then the ordering party is entitled to withdraw from

the contract, in accordance with the statutory regulations. Other claims resulting from default in delivery are exclusively governed by what is set out in Section VIII.2 of these conditions.

## V. Transference of risk, acceptance

- The risk passes to the ordering party when the article of sale has left the factory, even when partial deliveries are made or when we have accepted other obligations such as transport costs or delivery and installation services. If final acceptance is to take place, then the date of this is the date when risk is to be transferred. This final acceptance must be carried out immediately on final acceptance date, or, alternatively, once we have issued notification concerning preparedness for final acceptance. The ordering party is not entitled to decline final acceptance in the absence of any major defects.
- If there is any delay in dispatch / acceptance or in the absence of any dispatch / acceptance for reasons for which we are not answerable, then the risk transfers to the ordering party on the day of issue of notification that the article of sale is ready for delivery / final acceptance. We undertake to insure the article of sale at the cost of the ordering party, if requested.
- Partial deliveries are permissible if the ordering party accepts this as reasonable.

## VI. Reservation of title

- We retain ownership of goods supplied by us until we are in receipt of full payment of all claims resulting from the business relationship with the ordering party, including all incidental claims and up until all cheques and bills of exchange are cashed.
- Any processing or modification of our goods on the part of the ordering party will always be carried out on our behalf. If the object of sale is combined with other articles which are not our property, then we receive joint ownership of the resulting product at the ratio of the value of our goods to the value of the other materials. In addition, the same applies to the product resulting from any processing process as applies to the originally product supplied subject to reservation of title.
- If the object of sale is inseparably mixed or combined with other articles not belonging to us then we receive joint ownership of the resulting product at the ratio of the value of our article to that of the other articles with which it is mixed or combined at the time they are mixed or combined. If this mixing or combining is carried out in such a manner that the ordering party's article is to be regarded as the main element, then it is deemed agreed that the ordering party grants us rights of ownership on a percentage basis. The item in sole / joint ownership thus resulting is to be kept in safe custody by the ordering party.
- The ordering party assigns to us all claims resulting from the sale of goods in which we have rights of ownership, including all secondary rights – if applicable, to the value of our joint ownership share of the goods sold.
- If the ordering party is in a position to fulfil his obligations towards us, he is entitled to rights of disposal over the property to which we reserve title and over our claims in the ordinary course of business. Extraordinary types of disposal, such as levies of execution and transference of property by way of security, plus all types of assignment, are not permitted. The ordering party is to immediately inform us of any seizure on the part of third parties in respect of our goods and claims, especially of any levies of execution.
- We are entitled to insure the goods we supply under reservation of title, at the cost of the ordering party, against theft, fire, water and other types of damage if the ordering party fails to prove he has taken out appropriate insurance.
- In event of the ordering party being in breach of contract, especially in event of payment default, we are entitled to take back the goods supplied. Any assertion of our reservation of title plus levy of execution in respect of the article of sale on our part does not constitute withdrawal from the contract. At our request the ordering party is to immediately send us a list of the claims assigned to us in line with 4, above.
- We undertake to release any securities due to us at the request of the ordering party, whilst reserving the right of choice, if the value of any such securities exceeds by more than 20 % the claims to be secured.

## VII. Claim arising from a defect

We provide the following guarantee in respect of quality defects and legal imperfections in title pertaining to the goods delivered, with the exclusion of other claims – subject to Section VIII:

### Quality defects

- All parts found defective due to any circumstances occurring prior to the transference of risk are to be improved or replaced with perfect parts, at our discretion, free of charge. The discovery of any such defects is to be reported to us in writing, without delay. Any replaced parts become our property.
- The ordering party must provide us with the required time and opportunity to carry out any improvement work or fresh deliveries. Otherwise we are released from liability for any arising consequences. Only in urgent cases, i.e. where operational safety is in jeopardy, or where inordinately large losses are to be avoided (of which we are to be immediately notified) does the ordering party have the right to remedy the defect himself or to have it remedied by others, and thereafter to demand reimbursement of the incurred expenditure from us.
- As regards the direct costs associated with the improvement work or replacement, as long as the complaint turns out to be justifiable we will bear the costs of the replacement part, including the costs of delivery. We will also bear the costs of removal and fitting as well as the costs of providing the required fitters and assistants, including travelling expenses, as long as these are not disproportionate.
- In event of a quality defect, the statutory regulations provide the ordering party with a right to withdraw from the contract (giving consideration to the exceptions for which the law provides) if we fail to meet a reasonable deadline, set by the ordering party, for carrying out the improvement work or for delivering the replacements. If the defect is merely minor, the ordering party only has a right to a reduction of the purchase price. Any right to a reduction of the contract price is otherwise excluded.  
Other claims are governed by what is set out in Section VIII.2 of these conditions.

- No guarantee is provided in the following cases in particular: Improper or incorrect use, defective assembly or operation on the part of the ordering party or any third party, natural wear and tear, incorrect or negligent treatment, incorrect maintenance, the use of unsuitable operating resources, defective construction work, unsuitable ground, chemical, electrochemical or electrical influences – if we are not answerable for such.
- If the ordering party or any third party should perform any poorly executed remedial work we are not responsible for any ensuing consequences. The same applies to any modifications to the article of sale made without our prior agreement.

### Legal imperfections in title

- If the use of the articles of sale should breach any domestic industrial property rights or copyrights then, at our own expense, we will always make it possible for the ordering party to continue using the article of sale or will modify it for the ordering party in such a way that they no longer violate any industrial property rights. If this should not be possible from a commercial point of view or if it is impossible within a reasonable period, then the ordering party is entitled to withdraw from the contract. We also have a right to withdraw from the contract in such circumstances. In addition, we will release the ordering party from undisputed claims or claims deemed final and conclusive on the part of the owners of the industrial property rights concerned.
- Our obligations, mentioned in Section VII.7, are definitive in event of breach of industrial property rights or copy rights, subject to Section VIII.2. These only exist if
  - the ordering party immediately informs us of any asserted breaches of industrial property rights or copy-rights
  - the ordering party supports us to a satisfactory degree in defending the claims asserted / makes it possible for us to carry out the modifications mentioned in Section VII.7
  - we have the right to execute any defensive measures including out of court settlements
  - the legal imperfection in title is not related to any instruction from the ordering party, and
  - the violation has not been caused by the ordering party having independently modified the article of sale or having used it in a manner inconsistent with the contract.

## VIII. Liability

- If the article of sale is unable to be used in the way envisaged in the contract as a consequence of work not having been done or having been done wrongly based on suggestions or advice having been given either prior to or after conclusion of the contract, or if other additional contractual obligations have been breached (especially instructions for operating and maintaining the article of sale), then the rules set out in sections VII and VIII.2 accordingly apply, excluding other claims on the part of the ordering party.
- In the case of damage which is other than damage to the article of sale itself, we are liable (whatever the legal grounds may be) only
  - a) in event of intent
  - b) in event of gross negligence on the part of the owner / the company organs or management staff
  - c) in event of culpability for loss of life, physical injury or impairment of health
  - d) in event of defects which we have maliciously failed to disclose or the absence of which we have guaranteed
  - e) in event of defects to the article of sale if, in compliance with product liability law, there is liability for personal injury or damage to property in respect of privately used itemsIf we are culpably in breach of important contractual obligations we are also liable for gross negligence on the part of non-managerial staff and in the case of slight negligence, limited in the latter case to contract-typical, sensibly foreseeable loss. Any other claims are excluded.

## IX. Limitation of actions

All claims on the part of the ordering party (whatever the legal grounds may be) become statute-barred within 12 months. As regards claims for compensation as per Section VIII.2a – e, the statutory periods apply. These also apply in respect of defects in a structure or of articles of sale used in their normal way for a structure and having caused its defects.

## X. Software use

If any software is included in the delivery package, the ordering party will be granted a non-exclusive right to use the software, including its documentation. It is provided for use on the article of sale for which it is intended. It is not permissible to use the software on more than one system. The ordering party is entitled to reproduce, revise, translate or convert from object code into source code only to the legally permissible extent (§§ 69 a ff. UrhG [Copyright Act]). The ordering party is obliged not to remove or change our manufacturer information (especially copyright information) without our express prior agreement. All other rights concerning the software and the documentation, including copies, remain with us / the software manufacturer. It is not permissible to grant sub-licences.

## XI. Applicable law, place of jurisdiction

- The law of the Federal Republic of Germany applying to the legal relationships between domestic parties exclusively applies to all the legal relationships between us and the ordering party.
- The place of jurisdiction is the court in the jurisdiction of which our headquarters are located. However, we are entitled to file suits at the place where the ordering party has its headquarters.