

Standard Terms & Conditions for Export

1. Preamble

- a. These Standard Terms & Conditions for Export shall exclusively apply, save as varied by express agreement accepted in writing by both parties.
- b. The offer, order acknowledgment, 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.
- c. These Terms & 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.
- d. 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.

2. Orders and Specifications

- a. 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.
- b. The quantity, quality and description of the goods shall be those sent out in the seller's quotation (if accepted by the buyer) or the buyer's order (if accepted by the seller). Any product specification, sales literature, quotation etc. shall be strictly confidential and must not be made available to third parties.
- c. The buyer shall be responsible to 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.
- d. 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.
- e. In consultation with the buyer, 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

- a. The price of the goods shall be the seller's quoted price; where no price has been quoted, the price offered by the buyer and accepted in writing by the seller. Otherwise the seller's published export price list shall apply.
- b. The seller reserves the right, by giving notice to the buyer before production 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.
- c. 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.
- d. 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

- a. The buyer shall pay the price according to the payment terms as agreed upon and confirmed in writing by the seller.
- b. Payment shall be effected by interbank payment transaction only; no cheque or bill of exchange will be considered as fulfilment of the payment obligation.
- c. 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 2007 Revision of Uniform Customs and Practice for Documentary Credits, UCP 600.
- d. 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
 - charge the buyer interest on the amount unpaid, at the rate of 6 per cent points per annum above the current 3-months-Euribor, until payment in full is made.

5. Delivery

- a. FCA as per Incoterms 2020 applies. Upon the seller's notification that the goods are ready for collection, buyer and seller shall agree a reasonable due date for the buyer to collect the goods at the seller's premises.
- b. The seller reserves the right to deliver up to 10 % more or 10 % less than the quantity ordered without any adjustment in the price per unit, and the quantity so delivered shall be deemed to be in the quantity ordered.
- c. If the buyer fails to collect or 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 buyer as follows:
- a. in 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;
 - b. in case of goods to be delivered at the seller's premises (FCA Incoterms 2020) at the due date as per 5.a.

7. Retention of Title

- a. 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.
- b. 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.
- c. Until such time as the ownership of 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.
- d. 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 money or properties of the buyer and third parties.
- e. 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.
- f. 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.
- g. 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

- a. 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.
- b. 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.
- c. 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.
- d. 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 buyer must notify the seller in writing about wrong deliveries, quantity deviations and recognisable quality defects without any delay.
- e. If the buyer discovers hidden defects at a later point in time, the seller must be notified in writing within 3 days of their respective discovery.
- f. Where the buyer has a valid claim, the seller is obliged to either replace the goods free of charge or repair the goods at the seller's sole discretion. If the seller is not prepared or not 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.
- g. The buyer can only claim for damages if these are the direct consequence of a grossly negligent or intentional breach of contract or related obligations on the part of the seller. The liability is limited to the foreseeable damage which is typical for the contract.

9. Miscellaneous Clauses

- a. The return of goods already delivered is precluded. If the buyer returns goods and the seller accepts these such acceptance shall not be considered as dissolution of the contract nor as confirmation by the seller that the goods were defect nor as agreement to a credit note to be issued by the seller.
- b. This agreement shall not be assigned or transferred by either party except with the written consent of the other.
- c. Each party shall be responsible for all its legal, accountancy or other costs and expenses incurred in the performance of its obligation hereunder.

10. Choice of Law; Place of Jurisdiction

- a. Unless otherwise agreed and confirmed in writing by the buyer and the seller, this agreement shall be governed by and construed in accordance with German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and of German International Private Law (IPR).
- b. Should a specific provision of these Standard Terms & Conditions be or become void, the validity of the other provisions or of these Terms & Conditions in their entirety would not be affected in any way. The same applies in case of a loophole.
- c. 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.

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bankverbindung

DZ BANK, Münster/Westfalen · IBAN DE25 4006 0000 0000 4032 48 · BIC: GENO DE 33
Deutsche Bank AG, Münster · IBAN DE87 4007 0080 0150 6757 00 · BIC: DEUTDE33HAN
Postbank Dortmund · IBAN DE20 4401 0046 0055 3204 64 · BIC: PBNKDEFF 333

amtsgericht

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