

Export Conditions (Non EU)

The following Export Conditions apply to all deliveries made and rendered by us. They shall exclusively apply, save as varied by express agreement accepted in writing by both parties.

I. Offer

1. No order submitted by the buyer shall be deemed to be accepted by the seller unless and until confirmed in text form pursuant to § 126b of the German Civil Code (Bürgerliches Gesetzbuch - BGB) by the seller.
2. Documents supporting the offer, such as leaflets, illustrations, drawings, brochures, samples and weight specifications are approximate only, unless they have expressly been declared as binding. The seller may, with due regard to the buyer's interests, vary the technical structure and the chemical composition of the products. If it should be apparent that such changes will materially affect the business operations of the buyer, then it is the responsibility of the seller to inform the buyer accordingly.

II. Order

1. Quantity, quality and description of and any specification for the goods shall be solely governed by the seller's confirmation of order.
2. VAT as applicable will be added to prices, which include standard packing. Insurance is for the buyer's account, unless the separate agreement determines otherwise.
3. 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 rights of any other person which results from the seller's use of the buyer's specification.

III. Delivery

1. Delivery dates shall be governed by the relevant separate agreements between seller and buyer, and shall be deemed to have been observed, provided that the seller has given notice of his readiness to supply, even if the buyer does not take delivery of the goods within the delivery deadline.
2. The buyer shall be liable to take immediate delivery of the consigned goods and documents, even if the goods show signs of negligible defects or if the quantity differs to an insignificant degree from the quantity ordered. If, however, the buyer in such situations declines to take delivery of the goods or refuses to accept the documents, he shall be liable to pay all costs, fees, loss of interest, storage expenses, customs duties, and, where appropriate, costs incurred from the auction of the goods.
3. Interruptions of operations, exceeding of the delivery time or non-deliveries of subcontractors of the seller, lack of raw materials, energy or human resources, strikes, lock-outs, difficulties in the procuring of the means of transportation, traffic interruptions, orders of higher authority and other cases of force majeure on the seller's and his pre-supplier's side which are considerable and unforeseeable by the seller and not caused by the seller shall extend the delivery time for the duration of the impediment to the extent they are of importance for the ability to supply the goods. The seller shall inform the buyer as soon as possible about nature and duration of such impediments.
4. Part deliveries that are acceptable for the buyer shall be admissible. Deliveries shall as a rule be made in standard packaging.
5. The obligation of the seller to deliver shall be suspended for all transactions with the buyer so long as the latter despite a reminder is behind on a payment which is due.
6. If delivery of the goods is to be spread over a specific period, delivery shall be evenly spread over the whole period unless otherwise agreed. If the buyer is in default with acceptance of stipulated partial quantities, the seller shall be authorized, after allowing a reasonable period of grace, to store the amount in question for the account and at the risk of the buyer or to deduct it from the final quantity. In the latter case special conditions agreed in respect of goods already delivered shall no longer apply.
7. Unless otherwise provided by separate agreements between the contracting parties, the buyer shall obtain all required permits and documents, and fulfil any other requirements for the import of the goods and for the payment of the agreed price; the seller shall obtain all necessary documentation for export.

IV. Dispatch, Transfer of risk

1. Unless otherwise agreed, the seller shall choose the route and method of dispatch taking the interests of the buyer reasonably into account. At request of the buyer, the shipment will be insured at his cost against theft, breakage, transport-, fire- and water-damage, and/or against any other insurable risks.
2. The risk of destruction, loss or deterioration of or damage to the goods shall pass to the buyer with their dispatch. This shall also apply to freight pre-paid delivery. If the goods are collected by the buyer, the risk shall pass when the seller has made them available for collection and informed the buyer to this effect. If the dispatch is delayed by circumstances for which the buyer is responsible, the risk shall pass to the buyer from the day of readiness for dispatch; the seller shall, however, be required to arrange and effect on the buyer's behalf and at the buyer's expense any insurance indemnity which the buyer requests.
3. Where commercial terms such as fob, cif, ex works etc. are agreed upon, they shall be interpreted in accordance with the Incoterms in their latest amended version.

V. Payment

1. Payment shall be governed by all relevant separate agreements. Bills of exchange and cheques shall be accepted only according to specific agreement and shall not be deemed to constitute payment or be in lieu of payment. The buyer shall be required to bear the bank's deductions and handling charges. Payment shall be deemed to have been effected only when the due amount has been credited in full to an account of the seller. Payments by letter of credit shall be governed by the currently valid UNIFORM CUSTOMS AND PRACTICES FOR DOCUMENTARY CREDITS, issued by the ICC, Paris. If payment is effected by way of cheque, bill of exchange, letter of credit, cash against documents, documents against acceptance or any other similar means, such payment shall be made separately from the supply transaction to which that payment relates. The buyer accordingly must not interfere with the ordinary flow of payment, in particular in case of complaints relating to defects.
2. The seller reserves the right at his own choice to apply payments in discharge of previous invoice items plus default interest and costs accrued in the following order: costs, interest, and principal debt. Debts relating to goods or services for which a claim is made in respect of defects shall be exempted from this provision. Retention and set-off based on claims by the buyer that are disputed by the seller shall be excluded.
3. If payment is not fully effected within the agreed period, the buyer shall pay interest at the rate of 2 percentage points over and above the Federal Reserve Bank's minimum lending rate, calculated on the outstanding amount. This does not affect the seller's right to claim additional recompense from the buyer in respect of default on the part of the buyer.

4. Non-compliance with terms of payment, or conditions which on application of standards customary in banking are likely to reduce the buyer's credit-worthiness, shall give immediate effect and validation to all claims of the seller. Furthermore, the seller shall be entitled to demand payment in advance for all deliveries which remain outstanding as well as to withdraw from the contract at reasonable notice or to claim recompense for non-performance; moreover, the seller shall be entitled to prohibit the buyer from reselling or processing the goods which have been delivered but not yet been paid for and to repossess such goods at the expense of the buyer.

VI. Complaints and Limitation of Liability

1. Complaints relating to quality or quantity of the goods should be notified in writing to the seller immediately, or in any case not later than two weeks following receipt of the goods, quoting invoice and shipping number, the product name and the package marking; latent defects shall be notified not later than one week after their detection,
2. The buyer shall check – if required by sample testing – the delivered goods as to their adequacy for their planned application.
3. In case of duly notified and substantiated complaints, the seller shall be entitled to provide subsequent performance within a reasonable period of time. If the subsequent performance fails, or if it becomes impossible, is unduly refused or unacceptable for the buyer, the buyer shall be entitled at his own choice to reduce the purchase price or to rescind the contract.
4. Damage claims and claims of compensation for expenses of the buyer (damage claims), based on any legal ground whatsoever, above all those arising from any violation of obligations based on the relationship of debenture and from tort – shall be excluded. This shall not apply to the cases of compulsory liability according to the German Product Liability Act (Produkthaftungsgesetz), in cases of injuring the life, body or health and this shall further not apply to the cases of intentional or grossly negligent causation of damage or in cases of violation of an essential contractual duty. In case of breach of an essential contractual duty, the seller's liability shall be limited to the typical damages which were foreseeable at the time of the signature of the Agreement.
5. Without the explicit prior agreement of the seller, rejected goods may be returned only on expiry of a reasonable period of time (as in VI. 3. above).

VII. Advice on Technical Application

1. Advice on technical application shall be provided by the seller only if this is explicitly agreed between the parties to the best of his knowledge based on his research and experience. All data and information relating to suitability and application of products shall, however, be without obligation and shall not relieve the buyer of his responsibility for conducting his own checks and tests regarding suitability of products for the envisaged processes and purposes.
2. It is the responsibility of the buyer to advise the seller in writing of all current national, technical, or other standards or specifications which apply to goods supplied. If such advice is not provided, the buyer shall forfeit any entitlement to any claim against the seller in the event of goods supplied failing to comply with such standards or specifications, and shall be further responsible for indemnifying the seller against any consequential liability towards third parties. Such indemnity shall not apply if the seller has knowingly, intentionally, or by negligence, contravened the standards or specifications as indicated by the buyer and applicable in the buyer's country.

VIII. Retention of Ownership and Title

1. The seller shall retain legal ownership of all goods dispatched or delivered to the buyer until the buyer has fully discharged all due payments, whether in respect of a specific transaction, or of any other outstanding account. The buyer may, however, process and/or sell the goods in the ordinary course of business. If any goods of which the seller retains legal ownership as described are delivered to the buyer, the buyer shall hold such goods safely in his possession as bailee for the seller. The buyer shall furthermore ensure that all such goods remain clearly identifiable as the property of the seller. In this situation, and upon giving reasonable notice to the buyer, the seller or his authorized agent may repossess all or any of the goods which remain in his legal ownership.
2. 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.
3. If legal ownership of goods is conditional upon specific factors, such as special registration or other additional criteria, then the buyer shall be responsible for ensuring due compliance with all of such factors, and shall provide to the seller all relevant information and assistance as might be necessary to ensure such compliance.
4. If retention of legal ownership is not recognized in the recipient country, then the buyer shall provide the seller with security appropriate to and commensurate with the total value of the transaction, but limited to the value of the claims being secured.

IX. Place of performance, Arbitration, Applicable Law, Partial Voidness

1. Place of performance
 - a) for deliveries shall be the relevant point of dispatch from the seller.
 - b) for payments shall be the registered office of the seller.
2. All disputes arising out of or in connection with the deliveries subject to these Export Conditions shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.
3. The place of arbitration is Koblenz, Rhineland-Palatinate, Germany. The number of arbitrators is 1 (one). The language of the arbitral proceedings is English. The applicable substantive law is the law of Germany excluding the Uniform Law on the International Sale of Goods (CISG) and the Uniform Law on the Formation of Contracts for the International Sale of Goods.
4. If specific clauses of these export conditions are completely or partially void, the remaining clauses or parts of such clauses shall remain valid.

X. Language

The text of these export conditions herein expressed in the English language shall be the definitive text, and any difficulties or uncertainties in interpretation shall be resolved by reference to this text.

Stand: September 2017