



# Conditions for the Sale and Delivery

Updated: 1 May 2012

## 1. Scope

- 1.1. Supply contracts shall, as far as not expressly agreed to differently, be accepted and carried out according to the following sales and delivery conditions. This applies also to all subsequent contracts without further reference. Precious metal sales, repairs and assembly are subject to special conditions.
- 1.2. We (hereafter the supplier) contradict expressly all commercial trade conditions of the purchaser.
- 1.3. Arrangements amending these conditions must be stated in writing. Verbal agreements must immediately be confirmed in writing.
- 1.4. These conditions regulate the conduct of business.

## 2. Sales, Sales Brochures and Commercial Protection

- 2.1. Sale offers, unless stated differently, are subject to change without notice. The goods are subject to prior sale. The supplier is only obliged to supply after an expressly issued confirmation of the order.
- 2.2. In the absence of any particular reference in the sales offer, technical data, material used etc and standard values used in the trade should be assumed. Notification in the case of a variation will only be given when the product integrity warranty is affected.
- 2.3. All documentation provided to the customer by the supplier remains the property of the supplier. It should not be made available to third parties without the prior written permission of the supplier. If an order is not placed with the supplier and if requested by the supplier, all documentation including any copies that may have been made must be returned to the supplier without delay.
- 2.4. It is the responsibility of the purchaser to check all data contained in catalogues, sales brochures and published documentation that the intended application is suitable and appropriate, before acceptance and use. This also applies to the choice of suitable materials. The purchaser must ensure that the use of the product is appropriate.
- 2.5. The supplier is not duty-bound to check the correctness and/or legal conformity of the requirements and/or assumptions of the purchaser, as this is the sole responsibility of the purchaser. This applies in particular in the case of possible litigation for a breach of commercial protection laws.
- 2.6. The purchaser guarantees, that the execution of the contract does not result in any breach of commercial law by the use of components, drawings or samples supplied by the purchaser or third parties. The purchaser will conduct any possible defence procedures at his own expense and will compensate the supplier for any expenses resulting from such action.
- 2.7. Drawings, developments and discussion papers, which are generated in the course of contractual negotiations, are not binding. The purchaser cannot make demands based on such documents or services given by the supplier or his agents, except in the case of culpable intent or gross negligence.
- 2.8. Requested samples shall be billed by the supplier according to expense incurred.

## 3. Contract Order

Orders constitute a valid contract only after written confirmation of the supplier. The extent of the contract, thus generated, is determined by the actual text of the confirmation. The purchaser is obliged to check all relevant detail and draw attention to any discrepancy in writing.

## 4. Delivery Period and Extent

- 4.1. The Supplier will try to keep delivery dates but does not accept responsibility unless a delivery date is expressly agreed upon in by the parties in a separate agreement.
- 4.2. The delivery period starts when all technical and commercial questions have been resolved and terminates with the dispatch or the notification of dispatch. Keeping to delivery schedules assumes the keeping of obligations by the purchaser, particularly in respect to payments.
- 4.3. Purchaser initiated amendments to the supply contract cause the delivery schedule to recommence with the date of the revised confirmation of the order.
- 4.4. The supplier does not accept responsibility for any delivery delays in respect to acts of God or events not caused or predicted by the supplier, such as non-issue of permits by government instrumentalities, strikes etc. Delivery schedules are extended by the extent of the difficulty.
- 4.5. The supplier accepts liability for not maintaining the delivery schedule or for delayed delivery, including delivery scheduled by the supplier only in the case of wilful intent, gross negligence or a breach of essential contractual duty – see definition of essential contractual liability Para. 9.2. However, this implies no change in the requirement of proof at the disadvantage of the purchaser.
- 4.6. The right of the purchaser to cancel an order after the passing of an appropriate delivery deadline agreed to by the supplier is not affected.
- 4.7. Part delivery is deemed acceptable at minor inconvenience to the purchaser.

## 5. Point of Delivery, Risk Transfer, Cost of Packing

- 5.1. Delivery is affected from the place of production or store of the supplier at the expense and risk of the purchaser. The means of delivery is chosen at the discretion of the supplier according to usual practice, unless the purchaser has made a particular request.
- 5.2. In the case of delivery without any installation or erection, the risk in respect of the delivered items, even if free delivery had been agreed to, transfers at the point of acceptance of the purchaser, transport company or transport driver, or at the latest at the point of leaving the factory or store. If acceptance by the purchaser is delayed, the risk is transferred at the point of readiness to deliver, even if the delay of acceptance occurs after readiness to deliver. The supplier may insure delivery against breakage, transport or fire damage at the request and at cost of the purchaser.
- 5.3. In the case of delivery with installation or erection, the risk in respect of the delivery transfers to the purchaser on the day of acceptance or no later than the day of commissioning by the purchaser. Acceptance shall be deemed to have occurred unless the purchaser has expressly refused acceptance within 14 days after the request.
- 5.4. Transport- and all other packing according to the "Verpackungsverordnung" will not be taken back save EURO pallets. Purchaser is obliged to dispose of all packaging material at his own expenses.

## **6. Prices**

- 6.1. All prices are ex store, freight/postage, packing, insurance and the respective applicable VAT are added that may legally apply for commissioning, installation, adjustment and similar services, which are listed separately on the account.
- 6.2. In the case of precious metals, the official stock exchange day trading rate on the day of delivery will be invoiced.

## **7. Settlement of Accounts**

- 7.1. The agreed price is to be paid in full in EURO within 30 days of receipt of the account or equally valid request of payment, unless other arrangements have been agreed to. Risk and payment costs are born by the purchaser.
- 7.2. In the case of late payment, an additional 8 percentage points over and above the base rate according to Para 247 of the Federal Civil Code (BGB) is added to the account. Supplier shall be entitled to any higher loss suffered from the late payment.
- 7.3. The purchaser has the right to withhold or add charges only in the case of indisputable or legally determined demands.
- 7.4. Costs incurred to ascertain credit, letters of credit in dealings with foreign countries or similar are at the expense of the purchaser.

## **8. Warranty for Material Defects**

- 8.1. The purchaser should check goods immediately after receipt for possible defects. Obvious defects should be reported to us in writing within 5 working days after acceptance and hidden defects within 5 days of discovery of the defect.
- 8.2. The supplier has the discretion to repair or replace defects, which are reported to the supplier within 12 months after commissioning but not later than 15 months after delivery. This discretion is not waived even after repeated unsatisfactory repairs. The supplier must be given appropriate time and access to affect repairs. The supplier must be given appropriate time and access to affect repairs.
- 8.3. The purchaser has the right to rescind the purchase order or demand a price reduction (decrease in the order value), if the defect cannot be repaired in an appropriate period of time.
- 8.4. In the case of defects, which could have been determined by the purchaser with little inconvenience before inclusion or use, all under warranty claims for defective materials are voided as soon as the product is included or used. This does not apply if the supplier, leading employee, consultant or contractor is guilty of culpable intent, gross negligence or injury to life, body or health or a liability for the breach of a major contractual duty (see Para 9.2) or of a mandatory product liability exists.
- 8.5. No warranty claims will be accepted for a predetermined life of products especially under extreme or unknown operating conditions. Claims for the premature failure of the product are excluded.
- 8.6. In the case of products, which were manufactured to customer drawings and specifications, supplier warranty for materials defects only extends to include compliance with the specification. Legal liability according to the product liability laws as well as liability for intentional and gross negligence is not affected.
- 8.7. The warranty for material defects does not cover normal wear and tear or damage caused after risk transfer by faulty or negligent use or inappropriate use outside the specifications or contractual utilization. This warranty does not apply to used goods.
- 8.8. Material defects, which reduce the value or the useability only minimally or not at all, a liability is excluded.
- 8.9. Rights to referred warranty provisions according to §§ 478, 479 of Federal Civil Code (BGB) only allow the consumer to make claims within the scope of the legislation and do not regulate the understanding of good will provisions with the supplier and assume that any party with referred warranty rights will duly observe their duty, in particular the duty to report defects.

## **9. Liability**

- 9.1. All claims for damages and compensation of the purchaser are excluded – whatever the legal base, including claims as to illegal action or material defect or damage caused by the defect, or culpable neglect of associated contractual duties or the loss of income. This does not apply if the supplier, leading employee, consultant or contractor is guilty of culpable intent, gross negligence or injury to life, body or health or a liability for the breach of a major contractual duty or of a mandatory product liability exists.
- 9.2. In the case of a major breach of contractual liability, which does not involve intent or gross negligence and which does not involve an injury to life, body or health or the product integrity warranty, the liability shall be limited to compensation to the extent of assessable damage, which is typical in these contractual contexts. Essential contractual duties are those duties, where failure to comply endangers the purpose of the contract, i.e. significant late compliance, not just insignificant failure to cooperation and communication or not insignificant duties which are essential to the success of the contract purpose.
- 9.3. Materials, which the purchaser is supplying to the supplier for the manufacture of products ordered by the purchaser, are only insured against theft. The supplier is liable for the loss or deterioration of such goods only in the case of intent or gross negligence.
- 9.4. Advice given to the purchaser by the supplier, particularly as to the usage of products, is binding only if given or confirmed in writing.
- 9.5. The legal requirements as to the need of proof are not affected.

## **10. Retention of Title**

- 10.1. The delivered product (hereafter the joint product) remains the property of the supplier until paid in full and all due demands, which the supplier derives from the business relationship with the purchaser, have been met. During this period of the joint ownership no seizure, nor transfer nor ceding of the demands from the purchaser without the express permission of the supplier may take place. The supplier is to be notified without delay in case of a seizure by a third party.
- 10.2. The purchaser shall be entitled to resell the goods in the ordinary course of its business but shall assign to the supplier for the proceeds of sale of the goods to any third party.
- 10.3. If the purchaser processes the joint product into a new product, the processed article remains the property of the supplier. Ownership by the purchaser is excluded under Federal Civil Code (BGB) § 950. By processing, mixing or reconstructing the joint product with other products, not the property of the supplier, the supplier gains a share in ownership of the resultant product in proportion of the monetary value of the product, delivered by the supplier, together with other component products at the time of processing. It is the duty of the purchaser to store and control the resultant product with appropriate care.
- 10.4. Therefore, under these conditions, the resultant product is treated the same as the joint product. In the case of a sale of the resultant joint product, the purchaser reduces his claim on the product value by the amount proportioned according to the purchase value of the joint product of the supplier in respect to all other products contained in the resultant product. In the case of the sale of the resultant product, together with other components not owned by the supplier for a total all-inclusive price the purchaser shall pay the supplier the proportion of the total price that represents the share of the supplier.
- 10.5. The purchaser also accedes to a claim of the supplier in respect to any third party, if the joint product is incorporated in real estate property.



- 10.6. The purchaser is empowered, unless the power is revoked, to satisfy claims resulting from the resale in the course of normal business transactions. Furthermore, the supplier has the right to independently seek an order, if the purchaser has not fulfilled his contractual duty, in particular to settle due accounts on time, cessation of payment or if purchaser files a petition for bankruptcy. The purchaser is obliged to name, if requested, the debtors of outstanding claims and show the amounts owing. Making a claim on the reserved ownership goods and in particular a demand to transfer same constitutes in case of doubt a contract cancellation.
- 10.7. The supplier undertakes upon request by the purchaser to free the purchaser from any obligation to accede to claims of the supplier exceeding 10% of the actual value of the goods.

#### **11. Legal Venues**

- 11.1. The laws of the Federal Republic of Germany are exclusively valid, excluding UN Commercial Laws (UNCITRAL- Commercial Laws). The contract language is German. In case of any dispute concerning the interpretation of this Conditions the German version shall prevail.
- 11.2. In the case of the purchaser being a purchasing agent, a legal representative of the public instrumentality or utility, also for all disputes involving documents, exchange and cheque transactions, the legal venue for both parties is the local court of the supplier. The supplier has the right to take legal action against the purchaser in any other legal court.

#### **12. Severability Clause**

Invalidation of any one of the clauses in this contract does not affect the validity of other paragraphs. Should a clause be or become ineffective, the contractual parties to this contract shall endeavour to replace the ineffective clause with a new agreed clause, to reflect as fully as possible the commercial and legal purpose.