

# General Conditions of Delivery and Payment for Deliveries within the EU (excluding Germany, Austria, Switzerland) and worldwide as of June 1, 2016

## 1. Exclusive Validity of these Conditions

Any and all deliveries - including any and all future deliveries - shall exclusively be governed by these General Conditions of Delivery and Payment. Purchasing Conditions of the Customer are herewith explicitly rejected to the extent they are in conflict with these conditions.

## 2. Conclusion and Contents of Contract

2.1. Unless explicitly stated otherwise by the Supplier in any particular case, offers shall be non-binding.

All contracts shall become binding only upon the written confirmation and/or acceptance by the Supplier which shall solely be relevant for its contents.

2.2. Any Amendments shall become effective only if made in writing.

2.3. Any documents provided by the Supplier are meant for information purposes only and do in no way constitute any kind of guarantee.

2.4. Rights deriving to the Customer from this Contract must not be assigned.

## 3. Metal Contracts

If the Customer places an order with the Supplier for metal intended for the subsequent manufacture of products by the Supplier or for products to be delivered by the Supplier made of semi-finished products to be procured by the Supplier ("Metal Contract"), the Customer shall indicate in the order the quantity (in total and, if applicable, of each single partial delivery), the delivery date (if applicable, for each partial delivery) as well as possibly the price (if applicable the price formula). The detailed specification of the product shall - taking into account the processing times of the Supplier, the Customer is aware of - be provided by the Customer in due time so that the Supplier is in a position to deliver the products until the agreed delivery date. In case the Customer does not provide the specification of the products (in due time), the Supplier shall (a) be entitled to the agreed purchase price of the semi-finished products and/or (b) have the right to refuse the manufacture of the products entirely or partially and/or (c) in case the products are nevertheless manufactured, be entitled to claim reimbursement of the prolongation costs incurred in connection with the hedging transaction, if any. The reimbursement of such prolongation costs incurred in connection with the hedging transaction may be claimed by the Supplier also in case of a default in acceptance on the part of the Customer; the legal rights of the Supplier in case of default in acceptance shall remain unaffected thereby.

In case the Supplier refuses the manufacture of products according to letter (b) above, the Customer can demand provision of the semi-finished products upon full payment of the purchase price according to letter (a) above.

## 4. Tool Costs

Unless otherwise explicitly agreed upon, title in tools used by the Supplier shall fully remain with him, even if the Customer bears part or all of their costs.

## 5. Passing of Risk

Unless otherwise agreed between the parties in the individual case, delivery is effected FCA, Incoterms 2010.

## 6. Delivery

6.1. Partial deliveries are permitted unless otherwise explicitly agreed upon.

6.2. Delivery periods specified in the acknowledgement of order shall be deemed to run from the pertinent merchandise either leaving the Supplier's works or from its being held at the customer's disposal, as the case may be. Such periods may be exceeded by the Supplier by up to one week. The Supplier's obligation to observe agreed-upon delivery times is subject to the Customer being fully compliant with any contractual obligations of his own.

An appropriate extension of the agreed-upon delivery time shall be deemed to have been granted in case of an unforeseeable and inevitable event including but not limited to short-fall of energy or of raw materials, strike, lock-out, unforeseeable state action or a default or non-performance on the part of sub-suppliers. If such a delay exceeds one month or if there is a close down of the works either of the Supplier himself or of one of his pre-suppliers or in case of occurrence of extraordinary events beyond the Supplier's control which are not merely of a temporary nature, the Supplier shall be entitled to revoke the contract by giving the Customer written notice to that effect. The Supplier shall inform the Customer without delay in all aforementioned cases about the non-availability of the delivery and shall in case of revocation of the contract reimburse a possible consideration already provided by the Customer.

6.3. If the Supplier is in delay with his delivery, the Customer may only, after having set the Supplier an additional period of time of a length reasonable under the circumstances to effect such delivery and the Supplier having failed to do so, revoke the contract with regard to the delivery in question by giving the Supplier written notice to that effect. The same right shall inure to the Customer even without the need to set such an additional period if the Supplier is or has become unable to perform delivery for reasons that are or were within the Supplier's own responsibility or control. Other claims on grounds of delay or non-performance, in particular claims for damages, are excluded; this shall not apply in case of intent or gross negligence on the part of the Supplier or of persons whom he uses to perform his obligations or of his vicarious agents, in these cases the Supplier shall be liable without limitation in accordance with the legal regulations.

6.4. Once a stipulated deadline for acceptance of delivery has expired, the Supplier shall no longer be obligated to effect deliveries.

## 7. Incoming Inspection, Notice of Defects, Warranty and Liability

7.1. Notice of obvious defects including but not limited to deviations in the quantity or identity of any products received or of defects in the packing or due to transportation must be given in writing not later than one week after receipt of such delivery. In case of hidden defects said period shall begin to run from detectability of the defect.

7.2. For any defects in the products delivered by the Supplier which are properly and timely notified by the Customer the Supplier shall be liable to the Customer, at the Supplier's discretion, either to repair or replace such product ("supplementary performance"). Unless otherwise agreed between the parties, the place of performance for such supplementary performance shall be the same as that of the original performance. If such a supplementary performance has failed twice, the Customer shall be entitled, at his option, either to reduce the purchase price appropriately or to revoke the contract.

Moreover, in case of a culpable violation of essential contractual obligations by the Supplier, the Customer may demand compensation by the Supplier of the damage the Supplier had foreseen upon conclusion of the contract as a possible consequence of a violation of the contract or which he would have had to foresee considering the circumstances

he knew or had to know. Essential obligations in the above mentioned sense are obligations only the fulfillment of which allows the due execution of the contract at all and on the fulfillment of which the Customer may regularly rely. In addition, the Customer shall be entitled to unlimited compensation of damages in accordance with clause 7.5.

7.3. The period of limitation vis-à-vis entrepreneurs for claims according to clause 7.2 above shall be 12 months. The period of limitation shall begin to run from the date of delivery respectively acceptance of the products in question.

7.4. The period of limitation for replaced and/or repaired products shall run until expiration of the original period of limitation, at least, however, for three months.

7.5. In excess of the claims for damages according to clause 7.2, the Customer may claim damages without limitation in compliance with the legal regulations in the following cases:

- Intentional or grossly negligent violation of duty on the part of the Supplier or persons whom he uses to perform his obligations or his vicarious agents;
- damage to life, body and health;
- damage according to the German *Produkthaftungsgesetz* (Product Liability Act);
- in compliance with any other mandatory statutory provisions.

7.6. Apart from the claims for damages of the Customer according to clauses 7.2 and 7.5 above, claims of the Customer to compensate any direct or indirect damage no matter on which legal grounds they are based - including any claims for damages on grounds of the violation of pre-contractual duties as well as tort - shall be excluded.

## 8. Credit Unworthiness of the Customer

The continued absolute creditworthiness of the Customer is an indispensable precondition for delivery. If, after the conclusion of the contract, the Supplier obtains information which warrant reasonable doubts in this respect, he shall be entitled to demand, at his discretion, either advance payment or collateral or, if a consideration other than payment in cash had been agreed upon, payment in cash. Alternatively, he may revoke the contract or refuse performance and claim damages instead of performance.

Such doubts shall be justified, in particular, but not exclusively, in the following cases: A considerable deterioration in the Customer's overall financial position, substantial assignments or encumbrance as collateral by the Customer of inventories, claims or purchased merchandise to other creditors.

## 9. Retention of Title

9.1. The Supplier retains full title to all merchandise delivered until all current or future claims he has against the Customer are fully satisfied.

9.2. If the Customer uses such merchandise as material or component to manufacture a new product out of it, such manufacturing / assembly shall be deemed to be carried out by the Customer on behalf and in the name of the Supplier without any obligations arising therefrom for the Supplier. If the merchandise delivered is mixed or combined with other objects, the Customer, at the time of conclusion of the delivery contract, assigns its rights of return, ownership or co-ownership in the mixed or new object to the Supplier and shall keep the mixed object(s) in safe custody for the Supplier with the diligence of a prudent businessman.

9.3. The Customer may resell such merchandise / product only in the ordinary course of business. The Customer herewith assigns to the Supplier as collateral for his open receivables all claims he obtains as consideration for such resale or on any other legal basis. The Customer is authorized to collect the assigned claims. When the Supplier's claims are due, the Customer shall keep such collected amounts separately and shall immediately transfer them to the Supplier. The Customer must immediately notify the Supplier in case any third party claims attachment of the merchandise under retention or of any of the assigned claims. Any costs of a potential intervention shall be borne by the Customer.

9.4. If the total value of collateral obtained by the Supplier exceeds the total amount of claims open to the Supplier by more than 20 per cent, the Supplier shall at the request of the Customer be obligated to retransfer the excess amount to the Customer.

9.5. The authorization of the Customer to process or resell merchandise under retention of title or to collect claims assigned by the Customer to the Supplier expires in the following cases: the conditions of payment are not observed, substantial deterioration in the financial standing, suspension of payments, a petition for insolvency proceedings is filed, business is terminated or negotiations regarding a moratorium are initiated. In such case, the Supplier may take the merchandise into his possession. Unless expressly stated by the Supplier, such repossession, if conducted, shall not constitute a termination of the contract. Any storage, transportation or other costs arising as a consequence of such repossession shall be at the expense of the Customer. In such case and upon pertinent request by the Supplier, the Customer shall inform the garnishees about the retention of title and the assignment of claims. He shall also provide the Supplier with all information and hand over documents needed by the Supplier in order to pursue his claims against the garnishees. The Supplier may, at his discretion, credit merchandise retaken from the Customer at its invoice value, at its current market value or at the value reasonably obtainable by the utilization or sale of such merchandise, the costs thereof, at any rate, being at the expense of the Customer.

## 10. Conditions of Payment

10.1. Invoices must be paid net (i.e., without deduction) within 30 days after receipt of delivery. From the 31st day after such receipt the Customer shall pay default interest amounting to 9 (nine) percentage points above the respective basic rate as announced by the *Deutsche Bundesbank* (German Federal Bank) in the Federal Gazette.

10.2. The Customer is not entitled to withhold due payments. Set-offs may only be made against claims that are either uncontested or have become res judicata. Irrespective of whether the claims of the Supplier are due, he is entitled to set off his claims against claims the Customer has against companies the Supplier is directly or indirectly affiliated with.

10.3. In case of a substantial deterioration in the financial situation of the Customer, the Supplier shall have the right to demand immediate payment of all claims he has against the Customer.

## 11. Final Provisions

11.1. The place of performance for all obligations deriving from this contract shall be the address of the Supplier's works from which the pertinent delivery / performance must be made.

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**11.2. Applicable Law and Settlement of Disputes in Case of an EU and Norwegian Customer**

With regard to customers with a registered seat in the EU or Norway, this contract as well as all disputes arising out of it or in connection with it shall exclusively be governed by German Law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and of International Private Law. Exclusive place of jurisdiction shall be Nuremberg, Germany.

**11.3. Applicable Law and Settlement of Disputes in Case of Non-EU and Non-Norwegian Customers**

With regard to customers with a registered seat outside the EU and outside Norway, this contract as well as all disputes arising out of it or in connection with it shall exclusively be governed by Swiss Law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and International Private Law. All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The place of arbitration shall be Zurich, Switzerland. Arbitration shall be held in the English language.

**11.4.** The legal invalidity of individual provisions of this contract shall not affect the remaining provisions thereof.