

Terms for Deliveries Abroad

Terms for Deliveries Abroad (General Terms of Business and Sales)

1. General

All export business transacted by ITS hereinafter called „the supplier“ is governed by the following terms for deliveries unless otherwise stated in the offer or in the confirmation of the order. Any amendments or supplements to the terms by the purchaser as well as collateral agreements are binding only, if confirmed in writing by the supplier.

- 1.1 Offers expire 45 days after the date of the offer.
- 1.2 Offers are valid for the country in which the enquirer or purchaser is domiciled. The enquirer or purchaser is liable for all prejudice to and claims against the supplier due to the use of the products supplied outside such country.
- 1.3 Unless otherwise agreed, interpretation of contract terms customary in the trade shall be governed by the Incoterms 2000, including the supplements valid at the time when the contract is concluded.

2. Scope of delivery and prices

- 2.1 The supply obligation comprises the supplies and services confirmed in writing by the supplier.
The supplier has regard to the regulations of the association of German Electrical Engineers (VDE) valid at the time when the contract is concluded. If the products to be supplied are to be suitable for specific purposes of the purchaser, such specific purposes and the requirements with which the products to be supplied have to comply accordingly must be indicated fully and expressly by the purchaser in the order and confirmed by the supplier.
- 2.2 Unless otherwise agreed, prices are calculated net fob German port or, as the case may be carriage free to the German frontier, including the customary packing.
- 2.3 In the case of CIF deliveries, any expenses charged in the port of destination for discharge, lighter age or landing, port dues and wharf age are not included in the price.
- 2.4 Customs duties, consular fees and other taxes, dues or fees charged in accordance with any laws and regulations outside the jurisdiction of the Federal Republic of Germany, as well as any costs connected therewith, shall be borne by the purchaser.
In the case of delivery including customs or other duties, the price quoted is based on the rates in force at the time of tendering. The actual expenses will be charged. Any turnover tax possibly accruing will be charged separately.
- 2.5 The supplier has to comply with any foreign packing, weighing and customs regulations if precise information is given to him by the purchaser in due time. Any additional expenses connected therewith shall be borne by the purchaser.
- 2.6 In the case of fluctuations or rates of exchange, the supplier is entitled to demand retention of the original relation of values on which the prices quoted by him the were based.

3. Information, drawings and other documents

- 3.1 All information concerning weights and dimensions, drawings, explanations, descriptions and illustrations submitted by the supplier are to be considered as approximate. Appropriate quantities of drawings and other documents containing final data will be supplied upon request after conclusion of the contract. The supplier must reserve the right to alter the technical concept

upon which the offer is based, in so far as the performance and quality of the product offered for supply are not thereby affected.

- 3.2 The supplier will retain in exclusive ownership and all copyrights in respect of any drawings and other documents. Drawings and other documents must not be made accessible to third parties without the supplier's consent and shall be returned if so requested.

4. Terms of payment

- 4.1 All payments shall be made in accordance with the stipulations entered into, without any deduction and free of charge to the address of payment notified by the supplier. Payment terms are considered as adhered to if the supplier can dispose of the amounts within the terms agreed.
- 4.2 If a transfer of payments from the country from which payment has to be made should be impossible on the due date, the purchaser shall nevertheless pay the equivalent of the amount owed into a bank in the said country within the stipulated time. In case of deterioration in the rate of exchange for amounts paid in a currency not agreed upon, the purchaser shall make good such deficiencies by additional payment.
- 4.3 In the event of delivery being delayed without fault of the supplier, payments are to be made as if no delay had occurred.
- 4.4 Should the purchaser come into default partly or wholly in respect of his financial liabilities he shall, without prejudice to all other rights of the supplier, pay interest on arrears from the date at a rate of 3,5 % above the Lombard rate or the Deutsche Bundesbank valid at the time, provided that the supplier does not substantiate higher damages.
- 4.5 Compliance with all obligations of the supplier towards the purchaser shall be subject to compliance with the terms of payment agreed upon and with all other obligations of the purchaser towards the supplier.
- 4.6 The purchaser may only set off such claims or assert retention rights in respect of such claims which are undisputed or have been finally decided. The right or retention may only be claimed to a reasonable extent.

5. Reservation of ownership

The products supplied shall, unless otherwise agreed, remain the property of the supplier until all debts owing to the supplier or to be created in the future and arising from the business connection with the purchaser have been paid in full.
With respect to the case of resale of the goods – in any condition whatsoever – the purchaser agrees to assign and assigns to the supplier by way of security, at the conclusion of the supply contract and effective up to the time of payment of all debts owing by the purchaser to the supplier, any claims against the purchaser's customers which may have arisen or arise in future from the resale, and undertakes to notify the supplier at his request of the names of third-party debtors and of the amount of the debts owing by these to the purchaser. As long as the purchaser complies with his payment obligation and no detrimental change occurs in his financial standing, the supplier will not collect the debts assigned. If the reservation of ownership in the foregoing form is not effective under the law of the country of destination, the purchaser must cooperate in establishing similar security right complying with the provisions of his country, in favor of the supplier.

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6. Time of delivery and default

- 6.1 Delivery times shall only be binding if they have been agreed to by the supplier in writing.
- 6.2 Adherence to the delivery time shall be subject to the order being completely clarified, all permits being granted and all the documents, payments and securities to be furnished by the purchaser being received by the supplier in due time. The delivery time will be reasonably extended if any of the foregoing requirements have not been complied with in due time. The delivery time has been adhered to if the consignment is ready for dispatch ex works within the period agreed upon and if a notice to that effect is sent to the purchaser.
- 6.3 In the event of the supplier being prevented from carrying out his supplies and services in due time by mobilization, war, insurrection, strike, lock-out, interruptions of operation, fire, Acts of God, transport hindrances, alteration of the legal provisions, administrative measure or decrees or the occurrence of any other unforeseeable events which are beyond his control, the delivery time will be reasonably extended.
- 6.4 In the event of the supplier exceeding the agreed delivery time or a possible extension thereof according to paragraphs 6.2 and 6.3, and if the purchaser proves that he has suffered loss due to the default on delivery, he is entitled to demand such compensation amounting to 0,5 % for each complete week of delay, however not exceeding 5 % of the value of the supplies delayed. This does not prejudice the right of the purchaser to rescission after the fruitless expiry of a reasonable extension of time allowed to the supplier. Any other compensation claims of the purchaser in all cases of delayed delivery are excluded even after the expiry of an extension of time allowed to the supplier. This does not apply if compulsory liability is prescribed for legal reasons in cases of malice aforethought or gross negligence.
- 6.5 The purchaser shall bear any additional cost resulting from interruption or delay caused by him in the work to be performed by the supplier.
- 6.6 In the event of dispatch being delayed for reasons beyond the Supplier's control, he shall be entitled to store the products to be supplied at the Purchaser's risk and to demand reimbursement of any expenses incurred. The Supplier shall be entitled to take out at the Purchaser's expenses, an insurance against storage risks.

7. Testing and acceptance

- 7.1 Tests in the presence of the Purchaser or his representative as well as any special tests must be agreed upon in advance. The Supplier shall be entitled to charge the cost of such tests to the Purchaser.
- 7.2 If any acceptance test of the products to be supplied is stipulated, this has to be carried out at the premises of the Supplier. Acceptance has taken place if the Purchaser has not raised any justified complaints up to the time when the test is completed.
- 7.3 If the Purchaser waives any acceptance test agreed upon, or if he fails to be present at such test despite having been invited in due time, the test carried out by the Supplier shall be regarded as acceptance.
- 7.4 In the event of tests being delayed for reasons beyond the Supplier's control, any additional expenses resulting there from shall be borne by the Purchaser.

8. Transfer of risk

As a rule the risk will be transferred over to the Purchaser as soon as the products to be supplied are leaving the works or are placed at the Purchaser's disposal at the works. If, however, a pricing has been agreed upon for which a different regulation of transfer

of risk is stipulated under Incoterms 2000, including the supplements valid at the time of conclusion of the contract, such different regulation shall apply. Should dispatch be delayed for reasons beyond the Supplier's control, the risk is transferred to the Purchaser upon notification of readiness for dispatch.

9. Warranty

- 9.1 For any defects in the products supplied, including the absence of promised characteristics, the Supplier shall be liable in such a way that he will repair or replace at his option all parts in which defects are proved to have arisen within six months – without regard to the duration of operation – after the date of transfer of risk owing to any circumstance prior to the transfer of risk, in particular parts which become unusable due to faulty construction, inferior material or defective execution or the usefulness of which is considerably impaired. The ascertainment of such defects must be made known to the Supplier in writing without delay.
- 9.2 To remedy the defects, the Purchaser shall allow the Supplier the time and opportunity required according to the reasonable estimation of the Supplier. Should the Purchaser refuse to allow such time and opportunity, the supplier shall be released from the obligation to remedy the defects.
- 9.3 In case the defects are not remedied within a reasonable time or if the repairs fails to remedy the defects, the Purchaser is entitled to claim the right of abatement (reduction of purchase price). Should the Purchaser and the supplier fail to reach an agreement upon the abatement, the Purchaser may also demand redhibition (rescission of the contract).
- 9.4 The right of the Purchaser to bring actions arising out of defects shall in all cases be barred by the statute of limitations six months after the date of the duly raised notification of defect. Should no agreement be reached within this period, the Supplier and the Purchaser may arrange for a prolongation of this period of limitation.
- 9.5 The warranty obligation does not refer to natural wear and tear nor to damage occurring after the transfer of risk due to improper or unsuitable handling, excessive stressing, unsuitable operating material, faulty construction work, unsuitable foundations and chemical, electrochemical or electrical influences of a nature not provided for according to the contract. On improper alterations or repairs carried out by the Purchaser or third parties or in case of breaking of seals the warranty obligations of the Supplier and his liability for consequences caused thereby are rendered void.
- 9.6 Further claims of the Purchaser against the Supplier are excluded, in particular claims for the liability for damages not arising to the object of supply itself and the liability for consequential damages in particular loss of production, loss of utilization or loss of profit. This does not apply if compulsory liability is prescribed for legal reasons in cases of malice aforethought or gross negligence or in case of absence of promised characteristics.

10. Rescission

- 10.1 The Supplier shall be entitled to rescind the contract if the fulfillment of the same becomes impossible for reasons for which he is not liable. The Supplier is further entitled to rescind the contract if the conditions of the contract are so basically altered at a later date by circumstances which could not be foreseen at the conclusion of the contract that he can no longer be reasonably expected to fulfill the contract.
- 10.2 The Supplier can in the aforementioned cases demand from the Purchaser reimbursement for all the necessary expenditure incurred in connection with the contract, unless any parts manufactured under the contract can be used elsewhere within a reasonable time or unless the impossibility of fulfilling the contract is due to any intervention by German governmental authorities.

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11. Patent rights and other industrial rights

11.1 The Supplier is liable to the Purchaser for the infringement of patent rights and other industrial rights (hereinafter collectively referred to as "patent rights") of third parties only within the limits of the following provisions. Compliance with this obligation is subject to the Purchaser immediately informing the Supplier of any infringement claims raised by third parties and to the Purchaser proceeding in agreement with the Supplier in dealing with such claims and in the pursuance of his rights. Should any one of these conditions not be fulfilled, the Supplier will be relieved of his obligations. Should an infringement of third-party patent rights be ascertained and should for this reason the Purchaser be enjoined by final decision from using any product supplied, either in whole or in part, the Supplier shall at his own expense and at his option either

- a) obtain for the Purchaser the right to use the product supplied, or
- b) modify the product supplied in such a way that it becomes non-infringing, or
- c) replace the product supplied by another product or comparable efficiency which does not infringe any patent rights, or
- d) take back the product supplied against refund of the purchase price.

11.2 In case the Purchaser should make modifications to the equipment supplied, or incorporate additional devices or combine it with other equipment or devices such that patent rights of third parties are infringed the Supplier shall not be held liable.

11.3 Likewise the Supplier cannot be held liable for infringement of third-party patent rights for products supplied which were manufactured according to drawings, models or other data supplied by the Purchaser, in this case the Purchaser shall indemnify the Supplier in respect to third-party claims.

11.4 The Purchaser shall not be entitled to further or additional claims on the ground of infringement of third-party patent rights. In particular, the Supplier will not compensate the Purchaser for any indirect or consequential damage such as loss of production loss of utilization and loss of profit. This does not apply in so far as compulsory liability is prescribed for legal reasons in cases of malice aforethought, gross negligence or the absence of promised characteristics.

11.5 The Purchaser does not acquire any right to the use of patent rights applying to the combined use of the products supplied with other products.

12. Liability

The liability on the part of the supplier, his employees and all other persons appointed by the Supplier in connection with the execution of the contract for damage or injury to persons and property, negligence in the conclusion of the contract or culpable breach of contract is governed by statutory provisions: the liability is, however, limited to € 260.000,-- for each case of material property damage and a total of € 550.000,--. Any other or further liability in particular for financial damages, is excluded. This does not apply in so far as compulsory liability is prescribed for legal reasons in cases of malice aforethought, gross negligence or the absence of promised characteristics.

13. Final provisions

13.1 Any agreements, irrespective of whether they are entered into at the conclusion of the contract or after, must be in writing. Verbal statements of the Supplier's personnel are binding only if confirmed in writing by the Supplier.

13.2 All contractual relations shall be governed by the Law of the Federal Republic of Germany with the exception of the

application of the Hague Conventions of 01.07.1964 relating to Uniform Laws concerning the International Sale of Goods.

13.3 The place of performance for all contractual and legal claims shall be the registered business place of the Supplier.

13.4 The sale place of jurisdiction for any disputes directly or indirectly arising from the contract shall be Essen. The Purchaser is registered trader or company. The Supplier shall, however, also be entitled to bring an action at the place of the registered office of the Purchaser.

13.5 Even in the event of individual clauses of the contract being invalid, its remaining parts shall continue to be binding. Should any clause be invalid wholly or in part, the contracting parties will endeavor without delay to attain the economic result aimed at by the invalid clause in another legally admissible manner.

13.6 The foregoing provisions are applicable to deliveries made abroad. Services carried out abroad shall be governed by ITS GmbH, General Conditions for Services Abroad in their version valid at the time in question.