

General Conditions of Sale and Delivery (GCSD)

Date 01/2018

Generally

1. The following conditions apply to all our quotations and all contracts entered into by us, unless otherwise agreed in writing. The general terms and conditions of business of the other contracting party are not binding. They are hereby rejected. These General Conditions of Sale and Delivery apply in the version valid from time to time and to all business transactions in the future. We have the right to cancel the contract if the other contracting party objects to application of our General Conditions of Sale and Delivery.
2. Our quotations are not binding. The customer makes a binding offer to enter into a contract on acceptance of a non-binding quotation. The contract is made on our confirmation of order, which expresses the contents of the contract. Only the persons entered in the Commercial Register as being authorized to sign are established for us as competent to give a valid signature. A person with power of signature in order to become the subject matter of a contract must confirm declarations by our employees not authorized to sign in writing. Amendments to contracts, additional agreements and promises are only binding to such an extent as they have been agreed in writing.
3. Illustrations, drawings, statements of weight, specifications etc. contained in quotations, price lists and other general printed matter are prepared or ascertained according to the best of our knowledge, but are only approximately authoritative unless expressly designated as being binding. The right to make technical modifications remains reserved. Our estimates of cost, drawings and other documentation are protected by copyright. We reserve ownership of this documentation for ourselves. It must not be made accessible to third parties and must be returned to us if a contract is not concluded.

Dispatch, Passing of Risk

1. The goods purchased will be delivered to the customer by post if not otherwise agreed.
2. Dispatch is made at our discretion in the absence of agreements to the contrary. The costs shall be borne by the customer if we insure the consignment for breakage, transport and/or fire damage.
3. Risk passes to the customer [including if carriage free of charge is agreed] as soon as the consignment has left our warehouse or the other place of dispatch, as agreed. The risk of loss or deterioration of the goods passes to the customer on the day of readiness for dispatch, if the customer or his contractor delays dispatch of the goods.

Prices and Terms of Payment

1. Our prices are given as at the place from where delivery is made and exclusive of value-added tax, any further taxes, customs duties or other levies. We may make a charge of CHF 15.00 plus value-added tax for small-volume purchases where the net value of the goods is below CHF 50.00. Proportional delivery costs, which include postage / carriage, packaging and insurance will be charged on all orders. We may make consignments of up to CHF 500.00 by way of cash on delivery plus the costs of COD.
2. Euro prices are based on CHF prices. We reserve the right to adjust prices in Euros on strong fluctuations in exchange rates (fluctuations in the currency rate greater than 10%, basis for calculation: EUR 1.00 = CHF 1.50).
3. We reserve the right to make alterations in prices at any time for deliveries waiting to be made in the event of substantial changes in the relevant basis of calculation.
4. Generally, new customers pay for the goods in advance. Our invoices are payable within 30 days of invoice date. Agreements to the contrary are deemed special conditions and must always be agreed in writing. Bills of exchange and checks only apply as payment when honored.
5. Set-off against us is only permissible for claims, which are acknowledged by us or uncontested, or judicially determined.
6. Rights of retention are excluded unless they are based on the same contractual relationship and exclusion relates to claims, which are acknowledged by us or uncontested, or judicially determined. If a right of retention does exist, payments from the customer may however only be retained in such an amount for and until settlement of his counter-claims which shall be in a reasonable relationship to the counter-claims.
7. We charge default interest of 5% in the event of delay in payment. All debts still open including those for which a bill of exchange was drawn, become immediately due for payment if the customer is in default with payment, or if circumstances become known after entering into the contract, which cast serious doubt on his creditworthiness. Outstanding deliveries will only be made in this case against payment in advance or provision of adequate security. Any further claims to which we are entitled will remain unaffected by this.

Delivery Dates, Delivery

1. The contractually agreed delivery period applies. The date of delivery will be postponed by the period which elapses until final clarification, if on entering into the contract and agreeing on the delivery date, not all details of the contractual duties are settled, in particular, not all technical details.
2. The delivery period does not begin prior to full clarification and agreement in relation to all details of the order. The delivery period does not begin before production of any official approvals to be obtained by the customer and other documentation to be obtained by the customer for necessary for performance of the contract.
3. Appropriate self-supply in due time remains reserved.
4. The delivery period shall be extended appropriately if we are prevented from fulfilling our duty to deliver by *force majeure*, strikes, lock-outs or unforeseeable events, such as for example, breakdowns, official interventions, deficiencies in energy or raw materials, whether or not occurring in our factory or with a supplier, which cannot be avoided in spite of precautionary and economically reasonable measures sensibly to be expected to be taken by us. We may cancel the contract wholly or in part without payment of compensation, if delivery is subsequently impossible or unreasonable for us as a result of such occurrences.
5. Deliveries by installments not agreed contractually will be made by us on subsequent request by the customer which shall include his undertaking for payment of delivery costs. We shall only be under a duty to make partial deliveries, which have not been contractually agreed, if each individual installment is not less than one quarter of the value of the total order. The delivery period agreed for the total order will not be thereby altered if we make partial deliveries.
6. Framework agreements establish an obligation to take delivery in respect of all goods and services in the total order within one year from the time of the first contractual delivery. The customer shall lose the price advantage granted to him by reason of the order quantity, and the actual quantity purchased shall be decisive for pricing if the agreed goods and services are not completely accepted. Any differences will be charged to the customer. Orders for special products or items not normally held in store are to be bindingly agreed in respect of delivery dates for the individual goods and services, on placing the order.
7. In the event of a delay in delivery, the customer may first set us a reasonable period for subsequent delivery of the subject matter of purchase. The customer may only cancel the contract and/or dispense with performance after expiry of this subsequent period. Partial deliveries are permissible. We shall only be liable to pay compensation in connection with a delay [in particular also on cancellation or waiver] as well as default interest, if we shall have caused the delay intentionally or by gross negligence. Unless compensation for delay can be excluded, this compensation shall amount at maximum to 0.5% for each complete week of the delay but at most a total of 5% of the purchase price of that part of the delivery which on account of delay cannot be usefully used.
8. We only accept liability for a loss, including subsequent impossibility caused by us; in as far as, the impossibility was caused by our willful or grossly negligent actions.
9. We accept return of goods only after our previous written approval. Parts manufactured specifically for the customer are in principle excluded from return. Returns made without approval will be returned to the customer at his expense with the addition of a processing charge.

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Warranty

1. Warranties are excluded to the extent permissible by law. We only accept liability for gross negligence and willfulness unless exclusion is possible.
2. In no case will we accept liability for damages which arise to the customer or a third party as a consequence of defective products (damage resulting from a defect), as for example, lost production, loss of profits etc.
3. We accept liability according to the mandatory statutory provisions [Art. 197 (1) OR *[Swiss Commercial Code]* for absence of warranted characteristics, or if the item has material or legal defects which exclude or substantially reduce its value or its suitability for the intended use. Defects are to be notified to us in writing immediately.
4. The time of passing the risk is decisive for the presence of a material defect. Therefore, no guaranty is given for damages that arise after the passing of risk in the goods; particularly as a consequence of incorrect or negligent handling or of any usage not intended, modifications and repairs improperly carried out by the customer or a third party engaged without our approval. Likewise, any guaranty is excluded for normal signs of wear and tear [e.g. use of the goods, re-use, weather conditions, air pollution or improper electro-magnetic influences], defects as a result of insufficient servicing, non-observance of the operating instructions, overloading, testing, use of unsuitable materials, effects of chemical substances or electrolytic reaction, of burdening environmental conditions or as a consequence of other reasons over which the supplier cannot have any influence.
5. Warranty obligation generally shall last 24 months from the day upon receipt of the goods. The customer grants us the right at our own discretion either to make subsequent improvement to the defective goods or make a substitute delivery. The customer may demand cancellation on account of material defect or a price reduction, only if we do not carry out the subsequent improvement or make the substitute delivery within a reasonable period as set by the customer.
6. No warranty is given for the suitability of our goods for a particular application if the actual application does not ensue from written instructions included with the goods, or we did not expressly approve the suitability for a certain purpose in writing. It is the responsibility of the customer himself in all cases to test in advance and in detail, the suitability of our goods for the purpose intended by him.
7. We or our contractors only accept liability for damages which arise within the scope of the guaranty on account of breach of secondary contractual duties, on account of errors in advice, from tortious acts, on account of negligent breach of the duty of subsequent improvement or subsequent delivery, or from other legal grounds, if willfulness or gross negligence on our part is proved.

General Liability

1. Our liability is also excluded to the extent permissible by law for any further breaches of duty by us or our contractors, and where exclusion is not permissible, liability is limited to willfulness and gross negligence. This more particularly affects breach of secondary contractual duties, the liability on entering into the contract, or loss arising from tort. In no case may the purchaser or customer demand compensation from us in respect of consequential damages arising from loss of production, using, ordering or loss of profits and other direct or indirect consequential damages.
2. In all cases for which liability is not excluded but the extent may be limited, liability is always limited to proven losses foreseeable on entering into the contract, but at maximum, to our sales price of the product supplied by us to which the claim for damages is related or from which it results.

Reservation on Ownership

1. We reserve ownership in all goods supplied by us, including in goods for which the invoices are already paid, until payment of the purchase price of all goods supplied by us and until full settlement of all our claims arising from the business relationship and until the honoring of bills of exchange and checks.
2. The customer may only process the goods for normal business transactions and dispose of in his own name. It is forbidden for the customer to allow a lien to be created over the goods subject to the reservation, or transfer them by way of security. The customer must notify us immediately on levy of execution or confiscation of the goods or other measures taken by third parties.
3. The customer for his part is under a duty for such period as the customer shall not have paid the purchase price in full, to impose on the purchaser on re-sale, our reservation of ownership, or if this is not possible, to reserve ownership himself.
4. We may take the goods back, and the customer is under a duty to return them, in the event of delay in payment by the customer, without thereby automatically exercising our right to cancel the contract.
5. Future claims of the customer arising from re-sale of the goods subject to a reservation of ownership are assigned to us as from now, that is straight away, whether the sale is made without or following processing or mixing the goods subject to the reservation of ownership with other goods not belonging to us, and irrespective of whether the customer has reserved ownership for himself on re-sale. We accept the assignment. The assignment of the claim includes the amount of the value of our invoice for these goods subject to the reservation of ownership, on disposal of the goods subject to the reservation of ownership after processing or mixing with other goods not belonging to us, or on disposal together with other goods not belonging to us. The customer is only authorized to enforce the assigned claims for such period as he properly fulfills his obligations to us to make payment. We may notify our reserved ownership and the assignment of claim to the party contracting with the customer, if the customer is in delay with his payment as against us for more than four weeks from the first reminder letter.
6. We are under a duty on demand by the customer, to release securities at our choice, in as far as the value of the security given to us, including the claims assigned to us in advance exceed in total 20% of the claims to be secured.

Place of Jurisdiction, Place of Performance, Applicable Law, Language of Contract, Miscellaneous

1. The place of performance for delivery and payment is the location of our registered office [presently Wil, SG in Switzerland]. The courts of Switzerland shall have jurisdiction for all disputes [including actions concerning bills of exchange and checks] unless a court is prescribed other than the one at the location of our registered office.
2. The contractual relationship is subject to the law of Switzerland. The provisions of the Hague Sale of Goods Treaty dated the 1st July 1964 and the UN sales law pursuant to the United Nations Treaty dated the 11th April 1980 concerning contracts for international sale of goods, are excluded.
3. The German language is deemed to be agreed as the contractual language.