

TERMS AND CONDITIONS OF SALE

The following terms and conditions shall be applied to this contract unless otherwise specified on the face of this sales confirmation and/or agreed upon in writing.

1. Basis

This business shall be transacted between the Seller and the Buyer on a principal basis.

2. Delivery

(a) Any delivery date specified in this contract shall be the date on which the goods will be ready for shipment. Any delivery date specified in this contract is genuine forecast in the light of current conditions, but it is given without legal commitment and the Seller accepts no responsibility if the Seller is unable to meet it;
(b) The Seller may make at its own unfettered discretion and the Buyer shall accept deliveries by instalments unless otherwise provided in this contract;
(c) If delivery is made by instalments no claim in respect of or cancellation of any such instalment shall affect the remainder of this contract, each instalment being deemed to be a separate contract to which these terms and conditions shall apply; provided that this condition shall in no way affect the Seller's rights under these terms and conditions to suspend or terminate the whole contract; and
(d) Unless otherwise specified in this contract the delivery terms specified in this contract shall be construed in accordance with Incoterms 2000 as amended adopted by the International Chamber of Commerce which are in effect on the date of this sales contract.

3. Weight or Quantity

(a) The Seller will endeavour to supply the exact weight or quantity of goods ordered but, unless otherwise specifically agreed, such weight or quantity shall be subject to a tolerance of ten per cent plus or minus at the Seller's option; and
(b) The weight or quantity of any consignment of goods under this contract as stated by the Seller, the Suppliers or the Manufacturers of the goods shall be accepted by the Buyer as conclusive evidence of the weight or quantity received by the Buyer on delivery, unless any specific error in the Seller's, the Supplier's or the Manufacturer's stated weight or quantity or any actual loss in course of transit is proven the Buyer by positive evidence.

4. Insurance

If this contract is entered into at a price or prices C.I.F., such price or prices shall include the cost of insurance against Marine Risks (F.P.A.) only. If, at the request of the Buyer, the goods are insured against any additional risk, the Seller will have the right to charge the Buyer with the premiums paid by the Seller for such additional insurance.

5. Increased Costs

In the event that the Seller's cost of performance is increased after the date of this contract by reason of increase of freight rates, surcharges, taxes, other governmental charges, consular invoice fees, packing charges, or insurance rates including war risk or by reason of increase in the cost of the goods to the Seller caused by an increase in the price of the materials or energy expenses of the Suppliers or the Manufacturers of the goods, or in case any variation in rates of exchange increases the Seller's costs or causes damage or losses to the Seller in relation to this contract then the Buyer shall compensate the Seller for such increased cost, damage or losses. In the event of obstruction, non-operation or closing of or accident in the Suez or Panama canal or other navigable waters due to any reason whatsoever, the Seller shall not be liable for damage, losses or delay caused by such event and the Seller shall have the option to stop or delay the ship or to forward all or any part of any part of the goods by other means of transportation or to sail via any other route whatsoever, all at the risk of the Buyer and the Buyer shall bear all storage charges, additional freight and other extra costs arising therefrom.

6. Risk

The risk of loss of or damage to the goods shall pass to the Buyer when the Seller has delivered the goods in accordance with the terms of this contract; the Seller shall have no responsibility in respect of the safety of the goods after such delivery and accordingly the Buyer should insure the goods thereafter against such risks (if any) as it thinks appropriate.

7. Retention of Title

The title to all goods delivered remains with Seller (goods with title retained) until all receivables including all balances due to Seller or group related companies which entitle Seller to an off-set have been settled subject to the following conditions:

The use of material, to which Seller has retained the title, for manufacture is done on behalf of Seller being the manufacturer in the meaning of section 950 of the German Civil Code without Seller being under an obligation.

The material used for manufacture is deemed to be material to which the title has been retained in the meaning of this Paragraph. In case that Buyer mixes or combines such goods to which the title has been retained with other goods Seller shall become joint owner of the new goods in the proportion of the invoice value of the goods with retained title to the invoice value of the other goods used. Should in case of mixture or combination Seller's ownership expire Buyer agrees to transfer its title to the newly manufactured goods to Seller in the proportion corresponding to the invoice value of the goods to which Seller had retained the title. Buyer shall store such goods on Seller's behalf free of charge. The arising ownership rights are deemed to constitute goods with retained title in the meaning of this Paragraph. Buyer may sell goods with retained title only in the course of his ordinary business and at usual conditions as long as he is not in default of payment, provided the debts resulting from the sale are assigned to Seller in accordance with subsequent provisions. Buyer is not entitled to otherwise dispose of the goods to which the title has been retained. Buyer's debts resulting from the sale of goods with retained title are already assigned to Seller in advance. They serve to protect Seller's rights in the same manner as the goods to which the title had been retained. Where goods with retained titles are sold together with other goods not purchased from Seller the assignment of debt resulting from the sale shall be limited to the amount of the invoice value of such sold goods to which Seller had retained the title. Where Buyer uses goods with the retained title to fulfil a contract of manufacture or assembly the foregoing provision are applied correspondingly in respect of the debt arising from such contract.

Buyer shall be entitled to collect the debts assigned to Seller subject to that Seller may revoke such right at any time. In no event Buyer may assign the debt to other parties. Upon request by Seller he shall be obligated to immediately inform his customers about the debt assignment, if not done by Seller, and to submit to Seller all information and documents which are required to collect the debt.

Buyer shall inform Seller immediately in writing about all claims enforced by third parties in respect of goods with retained title or debts assigned to Seller. Should the value of securities given to Seller according to the foregoing provisions exceed all secured debts by more than 10% Seller shall be obligated upon request of Buyer to release securities at Seller's choice. If above security provisions are deemed to be invalid under the laws of the country in which the goods delivered by Seller are located a corresponding provision which is permissible under such laws and which gives Seller the same degree of security shall be deemed to have been agreed upon. Should Buyer be required to collaborate in this respect he shall be obligated to take all actions which are necessary to implement and maintain such rights.

8. Payment

(a) Unless otherwise agreed in writing payment shall be made by means of a letter of credit. The Buyer shall establish in favour of the Seller in an amount sufficient to cover the contracted amount, consular invoice fee, inspection fees and other charges and expenses to be borne by the Buyer, an irrevocable and confirmed letter of credit without recourse issued by an internationally recognised first class bank in form and upon terms satisfactory to the Seller which shall be valid and effective for a period of at least (15) days after the last day of shipment. This letter of credit shall also provide for partial drawings against partial shipment;
(b) The Seller shall be entitled to charge interest at the rate of 2 % per month on all overdue payments. This condition shall not operate so as to prevent or delay proceedings for the recovery of any account due and shall not interfere with any other right the Seller may have;
(c) If any sum due to the Seller under this or any other contract between the Buyer and the Seller whether or not for like or similar goods is in arrears, or if facts and circumstances come to our knowledge which in our opinion may have worsened the creditworthiness of Buyer, all receivables from this or any other contract become due for immediate payment irrespective

of any payment terms for bills of exchange received and accepted. In such cases Seller shall also have the right to suspend further deliveries under this contract until payment is made or to cancel this and/or any other contract between the Buyer and the Seller, and
(d) The Seller shall have the right to suspend deliveries under this and/or any other contract the Seller may have with the Buyer (even though the Buyer is not in arrears with any payment) if the Seller considers the amount outstanding in the account of the Buyer (whether actually due for payment or not) has reached the limit to which the Seller is prepared to allow credit to the Buyer, whether or not notified to the Buyer.

9. Warranty

(a) The Seller warrants that save as otherwise specifically provided in this contract the goods will accord with the contract specification and will be of sound materials and workmanship; and
(b) The Seller shall not be liable in any circumstances for any lack of fitness of the goods for any purpose whatsoever, and the Buyer shall in all cases test the goods for quality and suitability before taking them into use.

10. Claims

(a) The Seller's liability in respect of goods proven by the Buyer to be defective is limited to giving the Buyer a reasonable credit or allowance in respect of any such defective goods or, at the Seller's option, to replacing or repairing at the point of delivery specified in this contract any such defective goods; in no circumstances will the Seller's maximum liability under this contract exceed the invoice value of the defective goods sold under this contract.
(b) The Seller shall not be liable for;
(i) Adverse effects resulting from the application to the goods of any process, operation or treatment unless specifically recommended by the Seller, nor
(ii) any expenditure incurred by the Buyer in respect of goods proven or alleged to be defective, nor
(iii) loss of profit nor for consequential loss of any kind to the Buyer, however caused, nor
(iv) any goods which have been processed in any way by the Buyer or damaged after the risk in the goods has passed to the Buyer;
(c) The Seller shall not be liable for any claim for loss or damage in transit unless it is made so as to reach the Seller within such period as will enable a valid claim to be made against the carrier;
(d) The Seller shall not be liable for any claim in respect of goods delivered but alleged to be defective unless made in writing to the Seller within 15 days after the Buyer first has a reasonable opportunity to examine the goods and unless such allegedly defective goods have been placed aside for inspection by the Seller;
(e) No liability in respect of goods undelivered or lost, pilfered or damaged in transit will be accepted by the Seller where the risk of loss of or damage to the goods has passed to the Buyer before that occurrence or where the carrier has been given a clear receipt for the goods;
(f) The goods may only be returned to the Seller if so agreed by the Seller, and the latter's certificate as to the weight or quantity of returned goods received by it shall be final and binding. and
(g) Where a complaint or a claim has been made in respect of goods proved or alleged to be defective, the Seller may suspend further deliveries of goods under this contract until the validity of such complaint or claim has been finally determined and in such event the applicable delivery date or dates shall be postponed accordingly.

11. Restriction of Set off

The Buyer shall not be entitled to withhold or set off payment for goods delivered for any reason whatsoever.

12. Paramount Contract

In case of any inconsistency between the terms of sale as set out in this contract and the terms of purchase in any form of contract sent by the Buyer to the Seller, the terms and conditions of this contract shall prevail. This contract contains the entire bargain between the Buyer and the Seller and can be varied only in writing signed by the party accepting the variation.

13. Infringement

The Buyer shall be solely responsible for the consequences of any infringement of any patent, trademark, registered design or other industrial property right resulting from the Buyer's use of any of the goods, and the Buyer shall fully indemnify the Seller in respect of all costs, charges and expenses incurred by the Seller as a result of any such infringement or alleged infringement.

14. Breach of Contract

If the Buyer:-

(a) makes a fault in or commits any breach of its obligations to the Seller under this contract, or any other contract with the Seller or
(b) is involved in any legal proceedings in which its solvency is involved, or
(c) (being a company) commences liquidation, or ceases or threatens to cease to trade, or if serious doubts arise as to the Buyer's solvency, then in any such case, the Seller shall immediately become entitled (without prejudice to its other claims and rights under this contract) to suspend further performance of this contract for such time not exceeding six months as it shall in its absolute discretion think fit or (whether or not notice of such suspension shall have been given) to treat the contract as wrongfully repudiated by the Buyer and forthwith terminate the contract. The Seller will notify the Buyer of the exercise of its option to suspend or terminate this contract within reasonable time of its becoming aware of the act or default on the Buyer's part giving rise to the Seller's rights under this condition.

15. Force Majeure

If shipment or any performance required hereunder is prevented or delayed in whole or in part by reason of any prohibition of exportation, refusal to issue export licence or other governmental restrictions, war, revolution, riot, strike or other labour disputes, fire, flood, typhoon, peril or accident of the sea or any other causes beyond the control of the Seller or force majeure, then the Seller shall not be liable for non-shipment or late shipment of the goods or non-performance of this contract and the Buyer shall accept any shipment made within a reasonable time of the termination of the aforesaid cause, or at the Seller's option must accept the termination of all or any parts of this contract.

16. Clause Headings

The clause headings of these terms and conditions are for convenience only and shall be of no effect when construing the meaning of any provision of this contract.

17. Governing Law and Jurisdiction

This contract shall be governed by and construed in accordance with the laws of the Federal Republic of Germany. Place of jurisdiction, if permissible under such laws, is Düsseldorf, however, Seller shall be entitled to also bring cases before the courts competent for the principal office of Buyer or its managing or controlling branch. Place of fulfilment shall always be the place of delivery of the goods, place of fulfilment in respect of payment obligations shall be Düsseldorf.

18. Severability

Any provisions of this contract which proves to be void or unenforceable will only be ineffective and unenforceable as to that provision without affecting in any way the validity or enforceability of the remaining provisions of this contract. The Seller's rights shall not be affected or restricted by any indulgence or forbearance to the Buyer. No waiver by the Seller of any breach shall operate as a waiver of any later breach.