

IVICT Europe GmbH Sale Terms
GENERAL TERMS AND CONDITIONS

1. TRADE TERMS - Where the Goods are to be delivered *fas, fob, c&f (or cfr), cif, cpt, cip* or upon some other trade term to which the rules for the interpretation of trade terms known as Incoterms (2000 Edition as amended from time to time) („Incoterms“) are expressed to apply, then the provisions of Incoterms applicable to such trade term shall apply to this Contract. Said provisions shall however, not apply insofar as the same are inconsistent with any term hereof.

2. SHIPMENT/DELIVERY

(a) Partial shipment or delivery and/or transshipment shall be permitted unless they are unreasonably burdening Buyer. Breaches of contract or defects in a partial shipment or delivery shall not entitle Buyer to claims in respect of other partial shipments or deliveries or of this Contract as a whole.
(b) Date of bill of lading or air waybill shall be accepted as evidence of the date of shipment or delivery.
(c) Without prejudice to any other rights of Seller, dates and periods for delivery are extended by the time that Buyer does not perform its obligations towards Seller. Moreover, if in this case the continuation of the Contract is unreasonable for the Seller, he has the right to cancel the Contract without prejudice to other cancellation rights. This shall apply in particular if the Goods are to be delivered under this Contract *fas, fob, or fob airport* and the vessel or aircraft is not provided or nominated by Buyer in time for the shipment or delivery of the Goods.
(d) If under the terms of this Contract stowing, trimming or levelling of the Goods on board at the port of shipment is an obligation of Seller this shall not affect the passing of risk of loss of, or damage to, the Goods which shall pass from Seller to Buyer in accordance with Condition 3(f) hereof.
(e) In the event Seller shall charter a vessel for ocean transportation of the Goods, all charges and expenses for discharge of the Goods shall be borne and paid by Buyer.
(f) Unless expressly quoted otherwise, any dates and periods for delivery of the Goods are approximate only. If they overrun by two weeks, Seller is entitled to set a reasonable deadline for the delivery. Only after this deadline has passed, may Seller be in default (*Verzug*). Time for delivery shall not be of the essence (*kein Fixgeschäft*) unless expressly agreed by Seller in writing.

3. PROPERTY AND RISK

(a) Property in the Goods shall not pass to Buyer until the date on which Seller has received unconditionally and in full all amounts outstanding from Buyer to Seller under any contract between them. If Seller enters his receivables against the Buyer into a current account, the resulting balance shall be secured by the retention of title as well.
(b) Unless and until property has passed to Buyer under paragraph (a) of this Condition, Buyer shall have possession of the Goods as Seller's fiduciary agent and bailee only; and
(ii) Subject to paragraph (d), Buyer shall maintain the Goods separately from its own property and that of any third party, properly stored, protected and insured and identified as Seller's property; and
(iii) Seller shall be permitted to inspect the Goods at any time and may at any time repossess the same and may enter upon Buyer's premises for this purpose; and
(iv) Buyer may sell the Goods in the ordinary course of its business but shall not otherwise dispose of, or part with (*Besitz aufgeben*), the Goods; Buyer shall notify Seller forthwith of any attachment (*Pfändung*) of the Goods without prejudice to Buyer's obligation to prevent any attachment.
(c) Buyer hereby assigns to Seller for security purposes all of Buyer's re-receivables emanating from Buyer's sale of the Goods under retention of title, provided that Buyer shall remain entitled to collect such assigned receivables until Seller revokes this authorisation. Seller is entitled to revoke this authorisation if Buyer fails to duly fulfil its payment obligations under any contract between Buyer and Seller or if Seller becomes aware of circumstances that may materially impair the creditworthiness of Buyer. In the event of a revocation, Buyer shall forthwith furnish Seller with all information and documents as are required to collect the receivables and shall disclose the assignment to the debtor. Seller shall also be entitled to disclose the assignment.
(d) Processing of Goods under retention of title shall occur on behalf, but without obligation, of Seller.. If the Goods are processed, combined or mixed with other goods, Seller acquires joint property in the new goods in proportion of the value of the Goods to the value of the other goods. If as a result of the combination or mixing the goods of Buyer are to be regarded as the main product, it is agreed that Seller shall also have joint ownership therein. With respect to the goods resulting from processing, combining or mixing, paragraphs (a) through (c) shall apply correspondingly. (e) In the event that the value (in case of receivables the face value, in case of goods the estimated value) of the security obtained by Seller should at any time exceed the secured receivables by more than 50%, Seller shall release the excess security as designated by Seller upon Buyer's request.
(f) Notwithstanding that property in the Goods may not have passed to Buyer, risk of loss or damage to the Goods shall pass to Buyer either as provided by applicable Incoterms or (if Incoterms do not apply) at the latest upon delivery of the Goods to the Buyer, its agent or the carrier, whichever occurs first. Should the shipment be delayed for reasons attributable to Buyer, risk shall pass to Buyer upon Seller's notification that the Goods are ready for shipment. Buyer shall bear all storage expenses after risk has passed.

4. PAYMENT

(a) In case payment for the Goods shall be made by a letter of credit under this Contract, Buyer shall, unless otherwise provided for herein, immediately after the conclusion of this Contract establish in favour of Seller an irrevocable and confirmed letter of credit negotiable by sight draft through a prime bank of good international repute. Such letter of credit shall be valid at least until twenty (20) days after the last day of the period of the relative shipment or delivery. Such letter of credit shall be in a form and upon terms acceptable to Seller. It shall also expressly permit part shipment and shall authorise reimbursement to Seller for such sums, if any, as may be advanced by Seller for consular invoices, inspection fees and other expenditures for the account of Buyer. Should payment under such letter of credit not be duly effected, Buyer shall, upon notice thereof from Seller, immediately and unconditionally make payment in cash to Seller together with interest in accordance with Condition 4(g) from the date on which such payment became due under such letter of credit.
(b) All bank fees charged (in particular collection charges and confirming commissions) as well as all taxes, duties and other fiscal dues levied in respect of the payment shall be for the account of Buyer.
(c) Buyer shall in addition to the purchase price of the Goods specified on the face of this Contract pay all taxes, duties and other fiscal dues levied in respect of the sale of the Goods including (but not limited to) Value Added Tax and customs duties.
(d) All payments under this Contract shall be made by Buyer free and clear from any deduction. Buyer may withhold or set off payments only if and to the extent that Buyer's counter-claim is recognized by Seller or adjudicated to Buyer in a final court judgement.
(e) Buyer's default (*Verzug*) on payments under this Contract and/or to open any letter of credit or to make any other arrangements relating to payment hereunder does not require any further notice (*Mahnung*).
(f) If Seller, subsequent to the conclusion of the Contract, agrees to allow Buyer credit (*Sundung*), Seller may at any time in its sole discretion limit or cancel the credit of Buyer and may likewise require payment of all or any part of the purchase price to be made in cash in advance of delivery or may require guarantees or other security to be provided. Any payment or security so required shall be paid or furnished by Buyer promptly upon such requirement being notified to Buyer. Seller shall be under no liability to deliver the Goods unless and until Buyer has complied with all its obligations to Seller under this Contract and on any other account.
(g) In case of any default in payment of any amount due to Seller, Buyer shall pay interest on such amount from the due date at a rate of eight per cent (8%) above the base rate (*Basiszinssatz*) published by the German Federal Bank. Seller's claim for compensation of further damages remains unaffected.
(h) Seller may set off against any sums which may become due from Seller to Buyer, any sums which may be or become due from Buyer in respect of this Contract or on any other account.

5. INCREASED COSTS - If after the conclusion of this Contract there shall be any increase in the amount of freight rates, surcharges (bunker, currency, congestion or other surcharges), taxes, customs duties, export and import surcharges or other governmental charges or insurance premiums (including those for war and strikes, riots and civil commotion risks) incurred by Seller with respect to the Goods, or if after the conclusion of this Contract any new or additional charges or payments of such kind are introduced, Buyer shall reimburse such expenses to Seller promptly upon demand.

6. WARRANTY

(a) Unless expressly agreed in writing, Seller makes no guarantee as to the quality of the Goods (*Beschaffenheitsgarantie*). The characteristics (*Beschaffenheit*) of samples are not guaranteed.
(b) Buyer or the recipient designated by Buyer shall inspect the Goods without delay upon receipt. Apparent defects – as well as the absence of guaranteed qualities (*Fehlen garantierter Beschaffenheiten*), shortfall quantities and deliveries of Goods different to those ordered – shall be notified to Seller in writing without delay, at the latest 5 working days, in the case of perishable goods 24 hours, after the receipt of the Goods. Other defects shall be notified in writing without delay, at the latest 5 working days, in the case of perishable goods 24 hours, after they have been detected. For the timeliness of the notice, its receipt by Seller is relevant. The Goods are deemed approved if Buyer fails to notify Seller in due form and time.
(c) Upon discovery of a defect by Buyer (including without limitation the infringement of a third party's intellectual property right), any further processing or other use of the Goods shall be discontinued and Seller shall be given the opportunity to inspect the notified defect. In case of a justified and timely notification, Seller shall, at his option, remedy the defect by repairing or replacing the Goods.
(d) Any warranty claims for defects as to quality (*Sachmangel*) shall become time-barred one year after the risk has passed to Buyer. § 438 (1), No. 2 shall remain unaffected.
(e) Any claims against the Seller based upon malicious concealment of a defect or upon a guarantee as to the quality of the Goods (*Beschaffenheitsgarantie*) shall be subject to the statutory provisions.
(f) In a case of a supply chain recourse (§§ 478, 479 BGB) any claims for damages and reimbursement of expenses shall be subject to the provisions set out in clause 7.

7. LIABILITY

(a) In case of Seller's slight negligence, Seller shall be liable for damages or reimbursement of expenses only if it has breached a material duty and thereby jeopardised the intended purpose of the contract, irrespective of the legal basis of the claim (including for example default, defective deliveries, breaches of contract (*positive Vertragsverletzung*), breaches of pre-contractual duties and tort (*Delikt*)). Otherwise, Seller's liability for slight negligence shall be excluded.
(b) Any liability that does not require fault (*verschuldensunabhängige Haftung*) shall be excluded.
(c) Seller's liability shall be limited to compensating the damage that is foreseeable at the time of the conclusion of this Agreement and that is typical for this type of contract.
(d) All claims for damages and reimbursement of expenses against Seller, irrespective of their legal basis, shall become time-barred at the latest one year after the risk has passed to Buyer, in case of tortious liability (*deliktische Haftung*) after the discovery, or grossly negligent ignorance, of the circumstances giving rise to the claim and the identity of the liable party. Shorter limitation periods provided by law shall prevail.
(e) The exclusions and limitations of liability contained in paragraphs (a) to (d) shall not apply in case of intentional misconduct, in case of a liability for injuries to a person's life, body or health or in case of any liability under the Product Liability Act (*Produkthaftungsgesetz*). Neither shall they apply in the cases of clause 7 (f).
(f) The provisions of this clause shall also apply in favour of Seller's legal representatives and employees.

8. FORCE MAJEURE - In the event that the performance by Seller of its obligations hereunder is wholly or partly prevented (*unmöglich*) by force majeure, the times and periods for performing the relevant obligations shall be extended by the duration of the impediment plus a period expected to prepare the delivery or the commencement of the Seller's obligations. In addition, Seller is entitled to cancel without liability this Contract wholly or partly if the impediment to perform is, in Seller's reasonable opinion, not merely of a temporary nature. Force majeure within the meaning of this clause shall mean any circumstance beyond the Seller's control, any strike, lock-out, labour dispute, blockade, act of an enemy nation, civil war, riot, damage by lightning, fire, storm, flood, government intervention, embargoes, bankruptcy or insolvency of or non-delivery or late delivery by suppliers or manufacturers, failure to or delay in obtaining government licenses, permits or allotments, as well as any other similar act of God beyond the Seller's control, irrespective of whether or not it was mentioned herein. The preceding sentences of this clause shall apply accordingly if a performance is possible, but requires unreasonable expenses on the part of Seller.

9. BUYER'S DEFAULT, CESSATION OF PAYMENTS - All claims of Seller – including claims under separate contracts with Buyer – shall become due immediately if Buyer defaults on payments (*Zahlungsverzug*) under this Contract or under separate contracts with Buyer or ceases to make payments (*Zahlungseinstellung*) or if Seller becomes aware of other facts that give significant reason to doubt Buyer's ability to make payments when they fall due (*Zahlungsfähigkeit*) creditworthiness. This shall not apply if such facts existed already upon the conclusion of this Contract, provided that they were known to Seller or were unknown only because of Seller's gross negligence. Under the aforementioned circumstances, Seller is also entitled to perform deliveries only against advance payment or security and, if neither advance payment has been made nor security has been provided within two weeks of Seller's demand, to cancel this Contract. Seller is furthermore entitled to repossess any of the Goods held by Buyer, the title to which has not yet passed to Buyer (*Eigentumsvorbehaltware*) unless any other adequate security is given to Seller. Further rights of Seller shall remain unaffected. In addition to any of the events set forth in this Clause, if there are reasonable doubts as to Buyer's ability to pay or its creditworthiness, Seller shall be entitled to any of the remedies set forth in this Clause, including but not limited to acceleration of claims of Seller against Buyer, deliveries only against advance payment or security, cancellation of this Contract, and repossession of the Goods held by Buyer. In particular, without limitation, this shall apply if:
(a) where a commercial credit insurance is in place, the insured total receivables against Buyer are significantly reduced or the insurance coverage is cancelled by the insurance company or
(b) Buyer is in arrears with payment or
(c) insolvency proceedings are commenced, applied for or the opening of insolvency proceedings is rejected due to lack of assets, or in the event of liquidation or dissolution of Buyer or
(d) to a substantial extent, enforcement proceedings are commenced against Buyer or
(e) there is or threatens to be a substantial deterioration in the financial circumstances of Buyer or the company group to which Buyer belongs.

10. FURTHER ASSURANCE - Buyer shall from time to time (and at Seller's request) execute such further assurances, instruments or documents and do or cause to be done any such other acts and things (e.g., registration) as may be necessary, proper or advisable under applicable laws and regulations to ensure that property in, and legal and beneficial ownership of, the Goods passes to Buyer only in accordance with the provisions of this Contract.

11. GOVERNING LAW AND VENUE - This Contract shall be governed by and construed in all respects in accordance with the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply. Notwithstanding compulsory rules on exclusive jurisdictional venues, Buyer submits to the exclusive jurisdiction of the Düsseldorf courts but Seller may institute proceedings in the courts of any other competent jurisdiction. Buyer hereby irrevocably waives for itself and all its assets any immunity from suit, execution or other legal process to the full extent permitted by the laws of any jurisdiction in which proceedings may be brought.

12. WAIVER - Failure or delay by Seller to enforce any of its rights against Buyer shall not be construed as a waiver of such rights. If Seller does waive any of its rights in relation to a breach by Buyer of its obligations, such waiver (which must be in writing) shall not be construed as a waiver of such rights in relation to any other breach.

13. ENTIRE AGREEMENT - This Contract is exclusively based on the terms and conditions expressly set forth herein. Terms and conditions of Buyer are binding on Seller only if and to the extent they are expressly, and in writing, agreed by Seller.

14. SEVERABILITY - If any provision of these Conditions is or becomes invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the condition in question shall not be affected.