

# General Conditions of EXPORT

Schmitz & Partner GmbH

## I. Scope of Applicability

1. These General Conditions apply to all contracts of sale of any type of goods and/or services, if applicable, unless otherwise expressly agreed in writing with the customer.
2. Any general conditions of the customer shall apply only if and to the extent to which we have expressly consented thereto in writing. An express rejection of the customer's general conditions is not required.

## II. Formation of Contract

1. Our offers are not binding. The customer's order must be in writing and signed and must be received by us within the period of time limit if stipulated in our offer. The contract shall be deemed to have been concluded upon our written confirmation of the customer's order. The contract shall be subject to our confirmation.
2. Any price list, illustrations, catalogues, brochures, circulars, advertisements, and other descriptive documents, and any reference made to any DIN/EN/IEC-standard constitute an approximate guide only. These data or references shall be binding on us only upon written confirmation.
3. We may make appropriate price increases after the formation of a contract if our suppliers have raised their prices.

## III. Delivery, Passing of Risks, Force Majeure

1. Unless otherwise agreed upon in writing, the contract shall be construed and the risk shall pass in accordance with the international Rules for the interpretation of Trade Terms 2000 (Incoterms 2000). Unless otherwise agreed upon in writing, the goods shall be deemed to be sold FCA international German Airport alternatively CIP named place, incl. suitable export packing
2. The customer shall furnish the complete shipping instructions when placing his order with us.
3. The delivery period shall run from the date of the formation of contract as defined in Clause II, Par. 1., but not before the receipt of a Letter of Credit (L/C) and its unconditional acceptance by us, if no deviating payment terms were agreed. Unless otherwise expressly agreed upon in writing, the delivery date shall not be deemed "fixed under Sect. 376 German Commercial Code or Sect. 361 German Civil Code."
4. Should delay in delivery be caused by "force majeure", we shall be entitled to extend the delivery period accordingly. This shall also apply in the event that our suppliers do not deliver when due, goods in such quality and quantity as ordered. The term "force majeure" shall include, but not be limited to, strikes, lock-outs, or permits, licenses or authorisations, machinery failure, epidemics, fire or flood; embargo or export regulations, war and civil unrest. If the customer or we suffer unreasonable or inequitable harm by such delay, the respective party shall have the right to rescind the contract after giving notice in writing.

We shall have the right to part deliveries unless the customer suffers unreasonable or inequitable harm thereby.

## IV. Prices, Payments, Letters of Credit

1. Unless otherwise expressly agreed upon in writing, the contract price does not include performances such as, however, not limited to acceptance tests by customer, installation, start up of the goods supplied, training of customer's operation and maintenance engineers.
2. Except for value added tax (VAT), our prices include such other taxes and duties payable in the Federal Republic of Germany (FRG) Taxes and duties payable outside the FRG including banking fees for establishing L/C, LC-confirmation and the like, are for customer's account.
3. Unless otherwise indicated in the relevant offers, orders or contracts the payment will be settled by the customer in EURO against irrevocable Documentary L/C to be confirmed by a first class German bank, payable 100% of order and/or invoice value at sight when presenting the relevant shipping documents agreed between us and the customer to the L/C advising bank. The L/C shall be construed in accordance with the ICC Uniform Customs and Practice for Documentary Credits. The L/C should allow partial shipments. Where we expressly agreed payment settlement on collection basis such payments are due and payable in EURO upon presentation of shipping documents, i.e. on documentary collection basis through banking channels either by means of Documents against Payment (D/P) or Documents against Acceptance (D/A). Any payments must be made in full without any deductions.
4. If circumstances we know affecting the general credit of the customer and endangering his payments after the formation of the contract, we shall have the right to deliver after receipt of full and unconditional payment.
5. If the customer fails to make any payments when due, we shall be entitled to interest on all sums due and payable at 3.5% p.a. above the discount rate or rates of the Deutsche Bundesbank prevailing during the time of default, but not less than 7.5% p.a., without affecting other rights

## V. Retention of Title

1. The goods delivered, including the technical documents, shall remain our property until our claims against the customer have been satisfied in full. If and to the extent we have claims against the customer arising from transactions or dealings of any nature with the same customer other than those referred to in the preceding sentence, all goods supplied to the customer shall remain our property until all our claims against the customer from all such transactions or dealings have been satisfied in full.
2. If the value of the security provided exceeds our secured claims by more than 15%, we shall be obligated to release security of our choice at the request of the customer.
3. The customer must notify us without delay of any attachment or other violation of our ownership rights by third parties.
4. If the customer fails to make any payments when due, the customer shall be obligated to return the goods that are subject to our ownership rights after notice has been given by us, without affecting other rights. The customer shall, in such event, be obligated to ship back these goods to us at his own risk and expense.
5. The customer shall be obligated to insure the goods delivered at his own expense as long as they remain our property.
6. If the law of the country where the goods are situated after delivery does not permit us to retain the property of the goods, we shall be entitled to rights as closely related to our rights stated above as the law permits. The customer shall give us every assistance in taking any measure required to protect our right of property or such other rights as aforesaid.

## VI. Tests

1. If special tests, or tests in the presence of the customer or his representative are required, these tests must be specified by the customer when giving the order and shall, unless otherwise agreed in writing, be carried out at our factories. All costs incurred by us in connection with such tests will be charged to the customer.
2. If the customer fails to attend such tests after fourteen days notice that the goods are ready to be tested, the tests will proceed in the customer's absence and shall be deemed to have been carried out in his presence.

## VII. Warranty

1. Subject to the following provisions, we shall be obligated to remedy any defect resulting from faulty design, materials, or workmanship during a period of 12 months after the goods have been put into operation, but not exceeding 18 months after the passing of risks under Clause III.
2. The customer is obligated to promptly examine the goods upon delivery. And shall without delays notify us in writing of any defects. The notification must detail the goods and the defects. If the customer fails to comply with these obligations, the goods shall be deemed to have been accepted as faultless.
3. Upon timely receipt of the notification under Par. 2, we shall remedy the defect forthwith or, at our choice, replace the defective part at our own expense. If the notification reaches us between the period from the seventh month after delivery to the expiration of warranty, our obligations shall only cover material and wage costs. If we fail to remedy a defect timely notified to us within reasonable time, the customer shall be entitled to reduce the sales price or rescind the contract. In case of the return of the goods they shall be forwarded in accordance with our instructions.
4. Our warranty under this Clause shall not apply
  - a. to defects arising out of materials provided, or out of a design furnished, by the customer,
  - b. to defects due to causes arising after the risk has passed under Clause III,
  - c. to defective parts delivered by third parties, however, we shall be obligated to assign to the customer our corresponding claims against third parties,
  - d. to faults or damage by normal wear and tear or arising in consequence of negligence or improper handling or storage of the goods or parts thereof by the customer, excessive strain, unsuitable materials for operation, deficient civil engineering work, unsuitable soil conditions, chemical, electrochemical or electrical influences.
  - e. to consequences for any inexpert alterations or repairs carried out by unauthorised persons,
  - f. to the sale of used goods
  - g. if and as long as the customer fails to comply with his obligations under the contract unless his failure to comply is negligible or the customer is legally entitled to refuse performance.
5. Specific qualities of the goods or fitness for particular purposes shall be deemed to have been warranted only if expressly stated in writing.

## VIII. Liability

1. Subject to Par. 3 and the provisions of the Product Liability Law, our liability of whatever nature is excluded unless
  - a. the damage of whatever nature is caused by international acts or omissions or gross negligence by us or our executive representatives, or
  - b. the damage of whatever nature is caused by international acts or omissions by our non-executive representatives, or
  - c. the goods lack a specific quality or fitness for a particular purpose that we have expressly warranted.
2. Subject to the provisions of the Product Liability Law, our liability of whatever nature is limited to
  - a. losses which we could reasonably have foreseen at the time of the formation of the contract, and
  - b. losses directly related to our fault, unless our representatives or we acted intentionally or with gross negligence.
3. Par. 1 shall not apply if and to the extent our primary obligations under the contract are concerned. The damage of whatever nature that is recoverable by the customer shall, however, be limited according to Par. 2.

## IX. Industrial Property Rights

The aforesaid Clause VIII shall also apply to infringement of third party rights, particularly patent rights, regarding our goods.

We shall not be liable if the manufacturing of the goods supplied is based on specifications or drawings of the customer or if the application of the goods infringes third party rights. The customer is obligated to indemnify us with respect to corresponding claims and to compensate us for damage resulting from the infringement.

## X. Software

1. Any software supplied to the customer may be used non-exclusively only and in connection with the goods supplied and for the purposes of the customer's business. Software supplied by us is not transferable and may not be copied, amended or transmitted to third parties without our previous written consent.
2. The customer warrants that no employee or any other third party will use the software supplied by us for other purposes than described above in Par. 1.
3. The customer's right to use software supplied by us may be terminated for certain reasons, e.g., if the customer fails to comply with the provisions stipulated in this Clause.

## XI. Requirement of Writing

Any alterations or amendments of a contract must be in writing and signed by both parties in order to be valid.

## XII. Confidentiality

The customer shall keep strictest secrecy about and may not disclose the contents of technical documents or any know-how to any third party. The customer may not use such technical data or know-how for any purposes other than those envisaged by the contract. This confidentiality obligation shall remain in force also after the expiration of the sale contract.

## XIII. Severability

Even if an individual provision herein is or becomes invalid the remaining provisions of the contract or of these General Conditions shall remain valid. This also applies to issues the parties intended but failed to address.

## XIV. Arbitration and Applicable Law

1. One or more arbitrators appointed in accordance with these Rules shall settle all disputes arising from the contract under the ICC Rules of Conciliation and Arbitration. Such Arbitration shall be held at an appropriate location for both parties, e.g. Vienna, Zurich, Geneva. The arbitration award shall be final and binding on the parties concerned. The arbitration fee shall be borne by the losing party. The language to be used in the arbitrage proceedings shall be English.
2. German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall govern the contract.