

Basic Conditions of Export Sale and Delivery

General

These General Conditions of Sale and Delivery shall be an integral part of the contract of purchase. Conflicting or deviating conditions of purchase or other reservations made by the Buyer shall not be effective unless the Seller has expressly accepted them in writing for a particular order. Harry Gestigkei is allowed to change/modify the basic conditions which become effective after notification for the entire business relationship between the Seller and the Buyer. They are valid for any single contract as well as for general agreement.

1. Offers, Orders

- a) The Seller's offers shall not be binding with respect to price, quantity, delivery time and availability.
- b) The Buyer's orders shall become binding on the Seller upon receipt by the Buyer of the Seller's written order acknowledgement (or invoice or delivery note).
- c) Oral agreements shall only become valid when Seller shall confirm the same in writing. Offers of Seller that do not include any acceptance deadline may be revoked by Seller unless Seller receives written confirmation of acceptance by the customer within three weeks with effect from the offer date.
- d) The documents belonging to the offer / contract, such as illustrations, drawings and specifications of dimensions shall only give approximate indications insofar as they are not expressly designated as binding. Drawings and illustrations shall remain in the ownership of Seller. Harry Gestigkei reserves the right, during the course of further developments, to effect changes to the products insofar as the customer can reasonably be expected to tolerate the same.
- e) Where payment has been agreed in a currency other than Euros (EUR), the Seller reserves the right to reduce or increase the amount originally agreed so that, when translated into Euros, the sum invoiced is equivalent to the Euro value resulting from translation of the amount originally agreed at the time the contract was concluded.

2. Prices and Payment

- a) Prices are always indicated EXW (Incoterms 2000) excluding statutory domestic value added tax/comparable foreign tax and packaging costs. Customers within the EU shall be obligated to indicate their VAT identification number.
- b) For initial orders Seller requires for full advance payment.
- c) Where the Seller has reason to doubt the Buyer's solvency or creditworthiness and the Buyer is not prepared to effect advance cash payment or provide Seller with security as requested, Seller shall have the right to cancel that portion of the contract which he has not yet performed.
- d) Payment shall not be deemed to have been affected until the amount has been cleared into one of the Seller's accounts.
- e) The Seller reserves the right to use payments for the settlement of the invoices which have been outstanding longest, plus any interest on arrears and costs accrued thereon, in the following order: costs, interest, principal claim.
- f) The Buyer shall not have the right to withhold payments. Counterclaims may only be offset if they are uncontested or have become res judicata.
- g) With effect from the due date, all amounts owed shall be subject to interest at 8% above the base rate of the ECB. Harry Gestigkei reserves the right to claim further damages.

3. Delivery

- a) The Seller shall make every effort to effect delivery as early as possible. There shall be no fixed periods for delivery.
- b) Should, notwithstanding the preceding paragraph, a fixed period for delivery have been agreed, and should the Seller default with the supply, the Buyer shall grant the Seller a reasonable respite, normally of four weeks.
- c) Delivery shall be subject to punctual delivery of the appropriate goods by the Seller's own suppliers.
- d) The day of delivery shall be the day on which the goods leave the Seller's warehouse or, if that day cannot be ascertained, the day on which the goods are put at the Buyer's disposal.
- e) The customer shall take care of disposal of the packaging, insofar as Harry Gestigkei does not request return thereof. Equipment and auxiliary items delivered shall be assembled by the customer.

4. Force Majeure, Impediments to Performance

Force Majeure of any kind, unforeseeable production, traffic or shipping disturbances, fire, floods, unforeseeable shortages of labour, utilities or raw materials and supplies, strikes, lockouts, acts of government, and any other hindrances beyond the control of the party obliged to perform which diminish, delay or prevent production, shipment, acceptance or use of the goods, or make it an unreasonable proposition, shall relieve the party from its obligation to supply or take delivery, as the case may be, as long as and to the extent that the hindrance prevails, if, as a result of the hindrance, supply and/or acceptance is delayed by more than eight weeks, either party shall have the right to cancel the contract. Should the Seller's suppliers fail to supply him in whole or in part, the Seller shall not be under obligation to purchase from other sources. In such cases, the Seller shall have the right to distribute the available quantities among his customers while at the same time taking into account his captive requirements.

5. Shipment

- a) The Buyer reserves the right to choose the route and the mode of transport. Any additional costs resulting from special shipping requests made by the Buyer shall be borne by the Buyer. Unless prepaid freight has been agreed, the Buyer shall also bear any increases in freight rates which become effective after the contract has been concluded, any additional costs resulting from rerouting a consignment, storage expenses, etc.
- b) The risk of destruction, loss or damage shall pass to the Buyer upon dispatch of the goods or, if they are collected by the Buyer, at the time they are placed at the Buyer's disposal.
- c) Products are packed in accordance to the requirements for the agreed way of transport and the applicable transport regulations.

6. Retention of Title

- a) Title to the goods shall not pass to the Buyer until he has fulfilled all liabilities arising from his business connection with the Seller, which shall include settling accessory claims and claims for damages and honouring checks and bills. Title to the goods shall also remain with the Seller if the Seller's claims have been included in a current account and the balance of this account has been struck and acknowledged.
- b) If the Buyer defaults on his obligations to the Seller, the Seller shall have the right, without granting a respite and without cancelling the contract, to demand the return of the goods to which he retains title. Acceptance of the returned goods shall not constitute cancellation of the contract unless the Seller has expressly declared this in writing. If the Seller cancels the contract, he shall have the right to demand appropriate compensation for having permitted the Customer to use the item for a certain period.
- d) If goods to which Seller retains title are processed into new products, the Buyer shall be deemed to be effecting such processing on behalf of the Seller without thereby acquiring any claims on the Seller. Seller's title shall thus extend to the products resulting from the processing. If goods to which title is retained by Seller are processed together with, mixed with or attached to goods to which title is retained by third parties, Seller shall acquire co-ownership of the resulting products in the ratio of the invoice value of the goods owned by him to the invoice value of the goods owned by those third parties. If the goods, as a result of such mixing or attaching, become part of a principal matter of the Buyer, the Buyer, by accepting these Conditions, assigns in advance his title to the new item to the Seller.
- e) As long as the Buyer duly meets his liabilities to the Seller, he shall have the right, in the normal course of business, to do as he wishes with the goods to which the Seller retains title. This shall not apply, however, if he and his customers have concluded an agreement according to which the Buyer must not assign his claims on them to third parties. The Buyer shall not have the right to pledge, chattel mortgage or otherwise encumber the goods to which the Seller retains title. When reselling the goods, the Buyer shall make the passing of the title subject to full payment of the goods by his customers.
- f) By accepting these Conditions, the Buyer assigns in advance to the Seller any claims which may arise from a resale of the goods to which the Seller retains title, together with any incidental rights and security interests including bills of exchange and checks, so as to provide the Seller with security for all claims he has on the Buyer as result of the business connection. If goods to which the Seller retains title are sold together with other goods at a single price, the assignment shall be limited to the portion of the invoice value which covers the goods to which the Seller retains title, if the Buyer sells goods of which the Seller has co-ownership pursuant to clause 6. d), the assignment shall be limited to the portion of the invoice value, which corresponds to the Seller's co-ownership. If the Buyer uses goods to which the Seller retains title for processing a third party's product on a contract basis, in accepting these conditions he assigns in advance his contractual claim on the third party to the Seller in order to provide him with security for his claim. As long as the Buyer duly meets his liabilities to the Seller, he may collect claims from a resale or from contract processing himself. He shall not have the right to assign or pledge such claims as security.
- g) If the Seller believes his claims to be at risk, the Buyer shall, at the Seller's request, inform his customers of the assignment of his claims to the Seller and supply the Seller with all necessary information and documents. Any acts of third parties aimed at seizing goods to which the Seller retains title or at appropriating claims assigned to him shall be brought to the Seller's attention by the Buyer immediately.
- h) If the value of the security provided to the Seller exceeds the value of the claims to be safeguarded by more than 10 percent, the Seller shall, at the Buyer's request, release security of his own choice accordingly.

7. Damages, Defects

- a) The Seller shall only be liable for indirect damage/defect or damage/defect which could not be foreseen at the time of conclusion of the contract if such damage is due to a gross fault on the part of the Seller or one of his managerial employees.
- b) Obvious damages of shipment's packing have to be claimed immediately and notified by the forwarder who delivers goods to the Buyer.
- c) Notification of defects shall only be recognized if filed in writing within two weeks of receipt of the goods, together with supporting evidence, samples and packing slips, stating the invoice number and date, and the markings on the packaging.
- d) Hidden defects must be notified to the Seller immediately upon discovery, but not later than six months after receipt of the goods. The burden of proving that a defect is a hidden defect shall rest with the Buyer.
- e) Goods forming the subject of a complaint shall not be returned to the Seller except with the Seller's express consent.
- f) Claims made by the Buyer shall only entitle the Buyer, when approved, to be supplied with a replacement. If the replacement provided by the Seller is also defective, the Buyer may reduce the purchase price or opt to cancel the contract.
- g) The properties of the goods shall as a general rule only include the properties as stated in the product descriptions, specifications and labelling of the Seller. Public statements, claims or advertising shall not be classed as information on the properties of the item for sale.
- h) Technical advice provided by the Seller verbally, in writing or by way of trials is given in good faith but without warranty, and this shall also apply where proprietary rights of third parties are involved. The Seller's technical advice shall not release the Buyer from the obligation to test the products supplied by the Seller as to their suitability for the intended processes and uses. The application, use and processing of the products are beyond the Seller's control and therefore entirely the Buyer's responsibility.

8. Data Privacy

The customer must maintain secrecy with respect to confidential information of Harry Gestigkei and its subsidiaries and affiliated companies.

9. Cancellation costs

If the customer withdraws without justification from a sales order issued, the Seller may demand 15% of the sale price, at least 15 Euro, with respect to costs of

processing the order in question and loss of profits, notwithstanding the possibility of claiming a higher actual loss. The customer reserves the right to provide evidence of a smaller loss. This shall not entail any waiver by Harry Gestigkeit of claims provided for by law.

10. Warranty

Harry Gestigkeit shall in principle be liable for defects for a period of one year. In the event of a defect, the Seller shall at its own discretion be entitled by way of subsequent performance to effect a replacement delivery or to rectify the defect. In the event of a defect in title, Harry Gestigkeit shall be entitled to remedy such defect by modifying the delivered item in a manner reasonably acceptable for the customer. The customer shall only be entitled to claim damages in lieu of performance in the event of intentional or grossly negligent breach of duty on the part of the Seller. If in the event of a defect in title modification is not feasible on economically reasonable terms or within a reasonable period, both the customer and the Seller shall be entitled to withdraw from the contract. Where Seller has provided a warranty as to durability, the customer shall be required to furnish evidence that the material defect existed at the time of transfer of risk, unless the customer cannot reasonably be expected to do so in individual cases. In all other respects, the provisions contained below under "Liability" shall also apply to the warranty.

11. Applicable Law, Interpretation of Trade Terms, etc.

- a) German law shall apply. Application of the Uniform Law on the international Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods - both dated July 17, 1973 - and of the UN agreement on the sale of goods of April 11, 1980 shall be excluded.
- b) Customary trade terms shall be interpreted in accordance with the Incoterms effective at the time.
- c) Customs, import duties, charges, taxes and costs connected with the purchase contract shall also be born by the Buyer.

12. Place of Performance and Jurisdiction, Invalidity of Individual Clauses

- a) Place of performance for delivery shall be the Seller's dispatch department. Place of performance for payment shall be Düsseldorf.
- b) Place of jurisdiction for both parties shall be Düsseldorf/Germany. The Seller shall furthermore have the right to sue the Buyer at the Buyer's general place of jurisdiction.
- c) Should any clause in these General Conditions of Sale and Delivery be or become invalid in full or in part, this shall not affect the validity of the remaining clauses or remaining parts of the clause concerned. The parties shall replace any invalid arrangement by an effective one, which conforms as far as possible to the economic purpose of the invalid clause.

13. Language

These General Terms and Conditions of Business relating to Goods and Services of Harry Gestigkeit are issued in German and English. In cases of doubt, the German wording shall prevail.