



## Conditions of Sale and Delivery

### ACO Passavant GmbH (issue date 06.2007)

#### I. General

1. All deliveries and services are subject to these conditions and other separate contractual agreements. Deviating purchasing conditions of the buyer are not part of the contract, nor do they become so on accepting an order.

A contract comes into effect with written order confirmation from the supplier or with delivery of the goods.

2. The supplier reserves the rights of ownership and copyright to samples, cost estimates, drawings and other information of a material and immaterial kind – also in electronic form – insofar as these are not part of the contractual service; they must not be made available to third parties.

The supplier undertakes to obtain the buyer's consent before making the buyer's confidential documents available to third parties.

#### II. Price and services

1. Unless agreed otherwise, the prices apply ex works including loading in the factory but not including packaging, transport and unloading. If shipment is carried out at the buyer's request, the packaging and shipment costs are based on the supplier's corresponding price list. The goods shall be packed in the customary manner at our duty-bound discretion. Statutory value added tax shall be added to the prices.

2. If no special agreement has been reached, payment shall be made to the supplier's account without any deductions as follows:

- 30 % down payment after receiving the order confirmation,
- 30 % after half the delivery time, at the latest three months after the order confirmation,
- 30 % on delivery, at the latest one month after reporting that the goods are ready for shipping,

the rest after completion of installation, at the latest three months after reporting that the goods are ready for shipping.

Invoices for catalogue articles, customer service and spare parts are to be paid net 30 days after delivery or execution of the service and issuing the invoice.

3. The buyer only has the right to withhold payment or offset payments from counter-claims insofar as his counter-claims are undisputed or res judicata.

4. In case of delayed payments, we charge default interest on the basis of the interest we have to pay for bank loans from a major German bank, but at least 8% over the corresponding basic rate.

5. If after concluding the contract the supplier learns of circumstances that cast considerable doubt on the creditworthiness of the buyer, e.g. insolvency proceedings have been initiated, the supplier is entitled to refuse performance and to set an appropriate period of grace in which the other party shall make payment in return or provide security matching with delivery. After the end of the period of grace, the supplier can withdraw from the contract, abiding by the written form. In this case, he can also make all receivables arising from the business relationship due for immediate payment.



### **III. Delivery time, delivery delays**

1. The delivery time results from the agreements between the parties. For the supplier to meet the delivery deadline, all commercial and technical issues must be clarified and the buyer must have fulfilled all his obligations such as providing the necessary official permits or certificates, approving of the installation drawings or making a down payment. If this is not the case, then the delivery time is prolonged accordingly. This does not apply insofar as the supplier is responsible for the delay.

2. The deadline has been met if the delivery item has left the supplier's works or has been reported ready for shipment by the end of the period. If an acceptance procedure is required, the supplier's notification that the goods are ready for acceptance is what counts.

3. If shipment or acceptance of the delivery item is delayed for reasons for which the buyer is responsible, the costs incurred by the delay, or in the case of storage in the supplier's works at least 0.5% of the invoice amount, shall be charged for every month starting one month after reporting that the goods are ready for shipment or ready for acceptance, unless the buyer provides evidence of lesser damage. However, the supplier is entitled to sell the item for the purchaser's account after giving prior warning, and offsetting the buyer's claim to the proceeds from his purchase price claim.

Alternatively, after setting an appropriate period of grace, the supplier is entitled to withdraw from the contract or demand compensation instead of performance, at his own discretion. On choosing compensation, this regularly amounts to at least 25% of the net sales price, unless the buyer provides evidence of lesser damage. The supplier's entitlement to claim higher damages shall remain unaffected.

Any other legal rights of the supplier shall remain unaffected in the event of acceptance refusal or default on the part of the buyer.

4. If failure to meet the delivery deadline has been caused by an Act of God, labour disputes or other incidents outside the supplier's sphere of influence, the supplier is absolved of his delivery and performance obligation for the duration of the incident. This does not apply if the incident preventing performance is irrevocable or occurred at a point in time at which the supplier was already in default. Delivery periods and deadlines are extended in such cases according to the duration of the incident. The supplier shall inform the buyer as soon as possible about the beginning and end of such incidents.

This also applies to incorrect and unpunctual deliveries to the supplier by his subcontractors. In this case, the delivery period is extended according to the duration of the delivery delay in the coverage ratio if the supplier has concluded an adequate coverage transaction and has been let down by his subcontractor. The supplier shall inform the buyer immediately about the corresponding non-availability, and shall refund any payments made by the buyer without delay.

If the incidents named here last for a longer period of time, then the delivery period is extended by six weeks at the most. In the case of a delay lasting for longer than six weeks, the supplier is entitled to withdraw from the contract. In this case, the buyer is entitled to withdraw from the contract under the conditions stated in number 6.

5. The buyer can withdraw from the contract if it is definitively impossible for the supplier to complete the entire performance before the passage of risk. The same applies to incapacity of the supplier. Furthermore, the buyer can withdraw from the contract if on ordering equivalent items, completion of part of the delivery should become impossible and the buyer has a justified interest in rejecting the partial delivery.



If this is not the case, then the buyer shall pay the contract price due for the partial delivery.

If impossibility or incapacity without wilful intent or gross negligence on the part of the supplier occurs during the delay in acceptance or through the buyer's fault, then the buyer remains obliged to provide his counter-performance (payment).

6. If the supplier fails to deliver on time, the buyer can only withdraw from the contract after setting an appropriate period of grace of at least 30 days and this period of grace has expired in vain. A period of grace does not have to be set for cases coming under Section 323 Paragraph 2 German Civil Code.

Other claims resulting from delayed delivery are regulated solely by the provisions in Section 7 of these conditions.

#### **IV. Shipment, passage of risk, acceptance**

1. Risk passes to the buyer when the delivery item has left the works; this also applies in cases of partial deliveries or if the supplier has taken on additional services, such as assuming the shipping costs or delivery and erection.

Insofar as an acceptance procedure is required, this then counts for the passage of risk. The acceptance procedure must be carried out without delay after the supplier has reported that the goods are ready for acceptance. The buyer cannot refuse acceptance because of an immaterial fault insofar as the supplier explicitly acknowledges his obligation to remedy the defects.

2. If shipment or acceptance is delayed or does not take place for circumstances for which the supplier is not responsible, the risk passes to the buyer on the day of reporting that the goods are ready for shipment or acceptance; however, the supplier is obliged to take out the kind of insurance requested by the buyer, at the buyer's costs.

3. Partial deliveries are permitted if reasonably acceptable for the buyer.

#### **V. Reservation of title**

1. The conditions stipulated in this section also apply to all future deliveries, even if the supplier does not always make corresponding reference to this effect.

2. The supplier reserves the title to the delivery item until complete payment of all receivables resulting from the complete business relationship between the supplier and the buyer existing at the point in time of concluding the contract or handover of the delivery item to the buyer. The buyer shall treat the delivery item with all due care and attention.

3. If the buyer is a consumer, then title passes to the consumer already on payment of the complete purchase price, in deviation from number 2.

4. The supplier is entitled to take insurance at the buyer's costs to cover the item against theft, breakage, fire, water and other damage until the transfer of title, unless the buyer has already verifiably taken out corresponding insurance.



5. For the duration of the reservation of title, the buyer shall neither pledge nor transfer the title for the purpose of securing a debt. In the case of third-party attachments, seizure or orders, the buyer shall draw attention to the supplier's title and inform the supplier immediately. Any necessary costs incurred by the supplier resulting from court action taken according to Section 771 Code of Civil Procedure shall be paid by the buyer in the scope of the statutory costs and fees provisions, insofar as cost refunds cannot be demanded from the third party. The same applies for the costs of other necessary measures.

6. The buyer is entitled to sell or process the delivery item even before the passage of title in the context of correct business transactions, subject to the following provisions:

7. In the case of resale, the buyer already assigns to the supplier now at this point in time all receivables amounting to the total invoice amount (including VAT) owing to him from his purchasers or third parties from the resale, regardless of whether the delivery item is resold with or without further processing. However, in the case of the supplier's co-ownership according to numbers 7 and 8, the assignment only covers a share of the receivables corresponding to the supplier's co-ownership share. The supplier undertakes not to disclose the assignment and not to collect the receivable himself as long as the buyer does not default with his payment obligations. Under this prerequisite, the buyer remains authorized to collect the receivable. The buyer is obliged to provide the supplier at any time with detailed information about receivables from third parties resulting from resales.

8. Any reprocessing or alteration of the delivery item by the buyer is always carried out on behalf of the supplier.

9. If the delivery item is processed with other items not belonging to the supplier or otherwise inextricably connected or mixed, then the supplier acquires co-ownership in the ratio of the value of the delivery item to the value of the other items at the point in time of processing, connecting or mixing. The resulting new item is subject to the provisions of this section ("5. Reservation of title") accordingly.

10. If the delivered item is processed, connected or mixed in such a way that an item belonging to the buyer is deemed to be the main component, then it is agreed that the buyer transfers co-ownership to the supplier in the ratio of the value of the delivery item to the value of the other items at the point in time of processing, connecting or mixing. In this case, the buyer protects the ownership/co-ownership for the supplier. The resulting new item is subject to the provisions of this section ("5. Reservation of title") accordingly.

11. If the delivery item is processed, connected or mixed with other moveable items in such a way that an item belonging to a third party is deemed to be the main component, or if the delivery item becomes an essential item on third-party real estate, the buyer already assigns to the supplier now at this moment in time all rights against the third party accruing to him from the processing, connecting or mixing of the delivery item.

12. In the case of breach of contract by the buyer, particularly failure to comply with the payment obligation, the supplier is entitled to withdraw from the contract according to Section 323, 324 German Civil Code. In this case, the buyer is obliged to surrender the delivery item. Attachment of the delivery item by the supplier is not deemed to be withdrawal from the contract.

13. If the buyer defaults with his payments by more than four weeks, the supplier is also entitled to recover the delivery item without withdrawing from the contract. The statutory withdrawal rights for default of payment shall remain unaffected. This number 13 does not apply if the buyer is a consumer.

14. A petition to open insolvency proceedings on the buyer's assets entitles the supplier to withdraw from the contract and demand the immediate return of the delivery item.



## **VI. Warranty**

The supplier assumes the following warranty for material defects and deficiencies in title, ruling out other claims, subject to Section 7 and notwithstanding Sections 478, 479 German Civil Code:

1. All those parts shall be repaired or new deliveries made, free of charge, which should prove to be unusable or not immaterially impaired in use after delivery on account of circumstances that have occurred before the passage of risk. The supplier is at liberty to choose between repairs or replacement delivery. If repair or replacement delivery cannot be reasonably accepted or should have failed twice, the buyer is entitled to reduce the price or withdraw from the contract in accordance with the statutory provisions. As for the rest, the supplier is only liable for compensation in accordance with the following section 7.

The supplier shall be informed in writing as soon as any faults are ascertained. Notwithstanding the statutory obligation of business persons to examine the goods and submit due notification, the supplier shall be informed of any obvious faults in writing at the latest within 14 days after receiving the delivery, otherwise the warranty becomes null and void. Replaced parts become the property of the supplier.

2. In order to carry out all repairs and replacement deliveries deemed necessary by the supplier, the buyer shall give the supplier the necessary time and opportunity to proceed, after reaching a corresponding understanding; otherwise the supplier is absolved from liability for the resulting consequences. The buyer only has the right to remedy the fault himself or have it remedied by third parties and to demand remuneration from the supplier for the necessary expenditure, in urgent cases involving a threat to operational safety or in order to prevent any disproportionately great danger, whereby the supplier shall be informed immediately, or in cases where the supplier defaults in remedying the defect.

3. With regard to the costs incurred through the repair or replacement delivery, if the complaint should prove to be justified, the supplier shall bear the costs of the replacement item including shipment within Germany together with the appropriate costs for removal and installation, and also, if this can be fairly demanded depending on each isolated case, the costs of any necessary deployment of the supplier's fitters and assistants.

4. No warranty is assumed in particular in the following cases:

Unsuitable or incorrect use, faulty installation or commissioning by the buyer or third parties, natural wear, faulty or negligent handling, incorrect maintenance, unsuitable operating materials, faulty construction work, unsuitable building land, chemical, electrochemical or electrical influences, insofar as these do not result from the supplier's fault.

5. If the buyer or a third party repairs the delivery item incorrectly, the supplier is not liable for the resulting consequences. The same applies to any changes made to the delivery item without the supplier's prior consent.

6. The claims stipulated under section 6 fall under the statute of limitations after 12 months, apart from claims resulting from Sections 478, 479, 438 Paragraph 1 No. 2, 634a Paragraph 1 No. 2 German Civil Code.



## **VII. Supplier's liability for compensation**

The following provisions apply to all the buyer's compensation claims, regardless of any legal cause:

1. The supplier bears unrestricted liability for injuries to life and limb or health. The same applies to liability according to the product liability law, on assuming a quality or durability guarantee and for wilful breach of contract.

### 2. Breach of cardinal obligations

The supplier is liable for every kind of negligence in the breach of cardinal obligations. Cardinal obligations are those obligations which must be fulfilled before the contract can be executed correctly in the first place, and whose breach jeopardizes the purpose of the contract.

However, in the case of only slightly negligent breach of cardinal obligations, the supplier is only liable for the amount of damage that is typically foreseeable in consideration of all material circumstances apparent at the point in time of concluding the contract. The same also applies to gross negligence of vicarious agents who are not senior executives.

### 3. Breach of other obligations

In the case of breach of other obligations which are not cardinal obligations as described above, the supplier is only liable for damage which is typical for this kind of contract and foreseeable on concluding the contract.

In the case of merely slightly negligent breach, the supplier is not liable insofar as he is not in default. The same also applies to gross negligence of vicarious agents who are not senior executives.

4. The above liability restrictions also apply in favour of the supplier's employees.

5. The above liability restrictions also apply in favour of third parties under contract to the supplier.

6. Other claims for any legal reasons whatsoever are ruled out.

7. Insofar as the supplier cannot be accused of wilful intent or no claims are being enforced for injuries to the life, limb or health of a person, claims for damages fall under the statute of limitations after twelve months from delivery, apart from claims resulting from Sections 478, 479, 438 Paragraph 1 No. 2, 634a Paragraph 1 No. 2 German Civil Code.

## **VIII. Use of software**

1. Insofar as software is included in the scope of supply, the buyer is assigned a non-exclusive right which cannot be sub-licensed, for the use of the supplied software including the corresponding documentation, for his own business purposes and own business operation. The software is made available for use on the corresponding specific delivery item. Use of the software on more than one system is prohibited. Leasing, time-sharing, hiring etc. are not permitted. The buyer has no claim to the source code of the software.

2. The buyer may not revise or translate or decompile the software. However, the mandatory statutory provisions as per Section 69 of the copyright law shall remain unaffected. The buyer undertakes in particular to apply copyright marks on his backup copies of the software respectively not to remove such marks from the original data carriers or to change them without obtaining prior written consent from the supplier.



3. All other rights to the software and documentation including corresponding copies remain with the supplier respectively software supplier.

## **IX. Governing law, place of jurisdiction**

1. All legal relationships between the supplier and buyer resulting from these conditions and from any orders for goods making reference to these conditions are subject solely to the laws of the Federal Republic of Germany pertaining to the legal relationships between domestic parties, ruling out the United Nations Convention on Contracts for the International Sale of Goods.

2. The sole place of jurisdiction for all disputes resulting from the contractual relationship is the court responsible for the supplier's registered place of business.

However, the supplier is entitled to file legal action at the buyer's registered headquarters.