

General Terms of Delivery for e-Business of 04/2007

1. Introduction

- 1.1 Unless the contracting parties have expressly agreed otherwise in writing, the present General Terms of Delivery shall apply.

2. Making of a Contract

- 2.1 A contract shall be deemed to have been made upon the Buyer sending an electronic confirmation of order.
2.2 Seller shall be bound by Buyer's conditions of purchase only if Seller has accepted them separately.

3. Packaging

- 3.1 Unless other arrangements have been agreed upon
a) the listed prices are without packaging;
b) the goods are packaged according to normal trade practice in order to avoid, under normal transport conditions, any damage to the goods on the way to their agreed destination. The goods are packaged at Buyer's expense, and the packaging material will only be taken back if so agreed by the parties.

4. Passage of Risk

- 4.1 Unless otherwise agreed, the goods shall be deemed to have been sold "ex works" (EXW) (ready for collection).
4.2 Furthermore, the INCOTERMS shall apply in the version valid on the date when a contract is signed.

5. Period of Delivery

- 5.1 In the absence of any other agreement, the period of delivery shall begin at the latest of the following dates:
a) the date of the electronic order;
b) the date on which Buyer has complied with all commercial and financial preconditions for which Buyer is responsible under the contract;
5.2 Seller shall have the right to make partial or advance deliveries.
5.3 If a delivery is delayed on account of a circumstance on Seller's part that constitutes a reason for relief according to Article 12, a reasonable extension of the period of delivery shall be granted.
5.4 If Seller has caused a delay in delivery, Buyer may either demand the performance of the contract or withdraw from the contract, granting a reasonable respite.
5.5 If Buyer does not accept the goods supplied under the contract in the contractually agreed place or at the contractually agreed time, and if the delay is not due to any action or omission on Seller's part, Seller may either demand the performance of the contract or withdraw from the contract, granting a respite.
When the goods have been segregated, Seller may store the goods at Buyer's cost and risk. Seller shall also be entitled to claim a refund of any justified expenses that Seller had to incur in connection with performing the contract and that are not covered by the payments received.
5.6 Any other claims of Buyer against Seller for Seller's delay than those listed in Article 5 shall be precluded.

6. Prices

- 6.1 Unless otherwise agreed, all prices shall be ex works of Seller, without loading.

7. Payment

- 7.1 Payments shall be made in accordance with the agreed conditions of payment. Unless otherwise agreed, the entire price shall be due for payment before delivery.
7.2 Buyer shall not have the right to withhold payments due to warranty claims or any other counter-claims that Seller has not accepted.
7.3 If the term of payment is exceeded we will charge you with 9 % interest for delay p.a.
7.4 In all events, Buyer shall refund to Seller the dunning charges and collection costs which constitute a further damage caused by the delayed performance.
7.5 If Buyer is in arrears of payment by more than 60 days, Seller may rescind the contract by giving a written notice. Buyer shall return to Seller, upon Seller's request, any delivered goods and compensate Seller for any reduction in the value of the goods that has occurred, as well as refund to Seller all justified expenses that Seller had to incur in connection with the performance of the contract. Regarding undelivered goods, Seller is entitled to make available to Buyer the completed parts, or the parts with incipient processing respectively, and ask for a pro-rated part of the sales price.

8. Reservation of Ownership

- 8.1 For deliveries to Germany, the following shall apply:
Pending payment of all claims from the business association including possible refinancing or reverse bills, the seller reserves ownership in his goods deliveries, which may only be sold in regular business transactions. Upon processing with goods still under external ownership, the seller will acquire co-ownership in the new items. The extent of such co-ownership will result from the ratio of the invoice value of the goods supplied by the seller and the invoice value of the remaining goods. The buyer shall herewith cede the title from any

onward sale of the reserved goods to the seller, also insofar as the goods have been processed. Should the processing product, in addition to the reserved goods of the seller, include only such items as belong either to the buyer or which have only been delivered under the so-called simple ownership reservation, the buyer shall cede the entire purchase price claim to the seller. In other cases, i.e. in the event that advance cessions to several suppliers should occur, the seller shall be entitled to a fraction of the claim, corresponding to the ratio of the invoice value of his reserved goods and the invoice value of the other processed items.

- 8.2 For deliveries to countries other than Germany, the following shall apply:
Buyer shall reserve the ownership in the object sold until Buyer has met all financial obligations. Seller is entitled to document Seller's ownership on the outside of the delivery item. Buyer shall comply with the required formal regulations to safeguard the reservation of ownership. In case of an attachment or any other recourse, Buyer shall be obliged to claim Buyer's ownership and to inform the latter without delay.

9. Warranty

- 9.1 Subject to the below provisions, Seller shall undertake to remedy any defect affecting the fitness for use which is due to a deficiency in design, material or workmanship. Seller shall also be responsible for any defects concerning expressly requested properties.
9.2 However, this obligation shall only be relevant in the context of such defects as occur at one-shift operation during the period of one year from the point of time of the transfer of risks or upon delivery, respectively.
9.3 Buyer may claim the present article only if he informs Seller in writing and without delay of any defects that have appeared. The arrangements on presumption according to § 924 of the Austrian General Civil Law Code are excluded.
Once Seller has been informed of defects in this way, Seller shall - if the defects must be remedied according to the provisions of the present article - at Seller's choice:
a) rework the defective goods on site;
b) have the defective goods or the defective parts shipped back for reworking;
c) replace the defective parts;
d) replace the defective goods.
9.4 If Seller arranges for the defective goods or parts to be returned to Seller for the purpose of reworking or replacement, Buyer shall bear the costs and the risk of the transport, unless otherwise agreed. The re-shipment of the reworked or replaced goods or parts to Buyer shall be at Seller's costs and risk, unless otherwise agreed.
9.5 The defective goods or parts, which are replaced according to the present article, shall be at Seller's disposal.
9.6 Seller shall only refund any costs for remedying a defect, undertaken by Buyer himself, if Seller has agreed to this procedure in writing.
9.7 Seller's warranty obligation shall only apply to defects that appear when observing the applicable operating conditions and putting the item to normal use. His obligation shall, in particular, not apply to defects that are due to inadequate installation on the part of Buyer or Buyer's representative, inadequate maintenance, inadequate repairs or modifications undertaken by other persons than Seller or Seller's representative without the written agreement of Seller, normal wear. Buyer shall keep Seller harmless and free from any court action, in the event of an infringement of proprietary rights. When accepting repair jobs or reworking or modifying old as well as third-party goods, or when delivering second-hand goods, Seller shall not accept any warranty.
9.8 Prerequisite for the acceptance of warranty claims:
The supervision of the erection and/ or installation or modification and commissioning is carried out by a technician of Binder+Co AG or by a company authorised by Binder+Co AG.
The equipment supplied by Binder+Co AG is used in accordance with the original project specifications.
Only original wearing and spare parts are used. The plant operator needs to keep an appropriate stock of spare parts. Binder+Co AG undertakes no guarantee for the fulfilment of statutory or official regulations and impositions which they were not notified of in detail before conclusion of the contract.
9.9 As of the beginning of the warranty period, Seller shall not accept any liability that extends beyond the scope defined in the present article.
10. Liability
- 10.1 It is expressly agreed that Seller shall not be liable to Buyer for damages in the event of personal injuries, or for damage to goods that are not the subject of a specific contract, as well as for other damage and loss of profit, unless the circumstances of a specific case reveal that Seller acted with gross negligence. The reversal of the burden of proof according to § 1298 of the Austrian General Civil Law Code is excluded.
10.2 The purchased object provides only that level of safety that may be expected on the basis of the registration provisions, the operating instructions, Seller's rules on the handling of the purchased object - especially with regard to any possible inspections - and other instructions given.

- 10.3. In cases of slight negligence on the part of Seller, any claims for compensation shall be restricted to a maximum of 5% of the order sum unless Article 10.1 applies.
- 10.4. All claims for damages due to defects in deliveries and/or performances must be ascertained in writing and communicated to the other contractual party within 3 months of gaining knowledge of that damage or defect if Seller does not expressly accept the defect; otherwise all claims become extinct. However, the aforementioned liability limitations shall not apply in cases of intention or gross negligence of one of the contractual parties.
- 10.5. The liability on the part of the contractor according to the product liability legislation is limited to personal injuries, and shall be altogether excluded in cases of improper use or neglect of the operating instructions, warnings and safety regulations of the contractor.

11. Consequential Damage

- 11.1. Any liability on the part of Seller vis-à-vis Buyer for production stop, loss of income, downtime, financial cuts as well as any other economic or indirect consequential loss or damage shall be excluded.

12. Reasons for Relief

- 12.1. The parties shall be released in part or in toto from the timely performance of the contract if they are prevented by events of force majeure. Events of force majeure shall solely be such events that the parties are unable to foresee and avoid and that are beyond their domain. However, strike and industrial dispute shall be considered to be events of force majeure. A Buyer affected by an event of force majeure may, however, only claim the existence of force majeure if Buyer informs Seller without delay, at the latest, though, within 5 calendar days, about the onset and anticipated end of an obstruction, by sending by registered mail a statement, confirmed by the respective government authority or chamber of commerce of the delivery country respectively, on the reason, the anticipated effects and the duration of the delay.

In the event of force majeure, the parties shall make every effort to remove, or to mitigate respectively, the difficulties and the anticipated damage, as well as to keep the respectively other party continuously informed thereof; otherwise they shall be liable to pay damages to the respectively other party.

Deadlines or dates that cannot be observed on account of events of force majeure shall be extended by the duration of such events of force majeure, as a maximum, or, if applicable, by a period to be determined by mutual consent.

If a circumstance of force majeure prevails by more than four weeks, Buyer and Seller shall seek a solution for handling the technicalities of its effects by means of negotiations. If no solution can be reached by mutual consent, Seller may withdraw from the contract in part or in toto.

13. Data Protection

- 13.1. Seller shall have the right to store, to communicate, to process and delete person-related data of Buyer in the framework of their business relations.
- 13.2. The parties shall undertake to keep absolutely confidential vis-à-vis third parties any knowledge obtained in the course of their business relationship.

14. Place of Jurisdiction, Applicable Law, Place of Performance, Language

- 14.1. The place of jurisdiction for all disputes arising directly or indirectly from a contract shall be the relevant Austrian court with competences for Seller's principal place of business. Seller may, however, also resort to the court with jurisdiction for Buyer.
- 14.2. The parties may agree that an arbitral tribunal has jurisdiction.
- 14.3. Contracts shall be subject to Austrian law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980, Federal Law Gazette No. 1988/96.
- 14.4. Seller's principal place of business shall be the place of performance for deliveries and payments, also in the event that the transfer is agreed to be in a different place.
- 14.5. In the event of disputes arising from the present certified translation of the contract, the German text shall prevail.