

General terms and conditions of sale and delivery for the members of Groupement suisse de l'industrie mécanique (Swiss Association of Mechanical Engineering Companies)

1. General

These general terms and conditions (referred to hereinafter as GTC) are applicable to all sales and deliveries of manufactured products to a buyer acting in the context of his own professional or trading activity.

The GTC are an integral part of the contract of sale and are binding, with precedence over any other documents, such as brochures or catalogues, issued by the seller, which are deemed to be merely indicative.

If the GTC stipulate the requirement of a written document, the said document must be signed by the person making the declaration contained therein.

2. Offer, order and order confirmation

Unless indicated otherwise, any offer by the seller is made without commitment. The prices and delivery terms are valid only for the quantities ordered.

The order may be given in writing, by letter, fax or e-mail. It must be confirmed by the seller. If the order confirmation is inexact, the buyer shall inform the seller on receipt thereof. Failing such notification, the order confirmation alone is binding.

A copy of the GTC is attached to the order confirmation, unless the buyer already has a copy thereof. Failing notification to the contrary, the GTC are deemed to be accepted by the buyer. Any amendment of or addition to the GTC requires the seller's express written acceptance.

Once the contract of sale has been entered into, the buyer may not cancel or vary an order without the seller's prior written consent. The latter reserves the right to charge to the buyer any expenses that may derive from such cancellation or variation.

3. Price, change

The products supplied are invoiced at the price indicated in the order confirmation. Prices are expressed in Swiss francs, net ex works, excluding taxes, packing and insurance and without any deductions.

Any price change announced in the order confirmation shall be notified in writing by the seller, indicating the reasons for such change. If the buyer refuses any such change and cancels his order, he undertakes to inform the seller in writing of his decision on receipt of the change notification. Silence on the part of the buyer on receipt of the change notice is deemed to indicate his tacit acceptance of the change.

Orders and calls for delivery of small quantities may be subject to a price supplement as a contribution towards administrative expenses.

4. Accessory costs, other services rendered

Any accessory costs, such as costs for packing, transport, insurance, export licences and any other authorisations and certificates required, are charged to the buyer. The latter will also bear any taxes, fees, contributions, customs duties and any other sums charged in relation to the contract.

If delivery is postponed on request by the buyer or for any reason for which the seller is not responsible, any expenses related to the measures taken by the seller (storage, preservation, insurance against damage of any kind, etc.) are also deemed to be accessory costs charged to the buyer. An exception is made for late deliveries as defined in art. 7 GTC.

5. Payment terms and conditions

Payment by the buyer will be due within 30 days starting from the invoice date. This due date is binding, even if the transport or receipt of the goods have been delayed or have become impossible for reasons for which the seller is not responsible.

Any amount remaining unpaid at the agreed due date fully entitles the seller, without any further notice, to charge interest for late payment at the annual rate of 5%. Such interest will be charged from the due date until payment. The buyer shall also pay any expenses arising from the late payment, in particular payment reminder expenses.

Any suspension of payment requires the seller's prior written agreement. The same applies to any compensation or offsetting exception.

In specific cases, in particular if the buyer's credit worthiness is reduced, the seller reserves the right to demand guarantees or full payment before delivery of the goods.

6. Retained ownership

The seller retains ownership of the products delivered until the agreed selling price is paid in full. The buyer undertakes to respect the seller's right of ownership and, if necessary, to inform any third parties concerned. He undertakes to take, together with the seller, any steps necessary to safeguard this right, in particular concerning the recording of such retained ownership in the relevant register.

7. Delivery

Delivery is made either by the direct hand-over of the product to the buyer or by simply notifying their availability, or by their issue to a forwarding agent or a transport contractor on the seller's own premises or in his stores.

Exceptionally, the seller reserves the right to proceed with staggered deliveries and to submit a separate invoice for each such delivery.

The delivery date is fixed in the order confirmation. If the parties have agreed on a lead time, at the end of which delivery should be made, such lead time starts on the day when the order is confirmed. The deadline thus fixed can be met only if all the data required for order fulfilment are available to the seller.

If the seller anticipates that he will be unable to deliver on the announced date, he shall notify this immediately in writing to the buyer, stating the reasons and, if possible, the new delivery date.

Late deliveries do not entitle the buyer to receive damages and interest, to withhold any sums due or to cancel any outstanding orders. However, 3 months after the scheduled delivery date, if the seller has still not made delivery for any reason, other than *force majeure*, the sale may be cancelled on request by either of the parties. Any sums already paid by the buyer will be returned to him.

The delivery deadline may be extended in the event of any impediments that the seller has been unable to avoid, notwithstanding his reasonable efforts to do so, or in cases of *force majeure* such as war, riots, fire, natural disasters, strikes or accidents.

For technical reasons related to manufacturing, the number of parts delivered may vary by more or less 10% of the total ordered quantity.

8. Transfer of risks

Risks are transferred to the buyer at the latest when the goods to be delivered leave the seller's works. In particular, this means that the goods travel at the buyer's own risk and peril.

If the delivery is delayed on the buyer's request or for other reasons for which the seller is not responsible, the risks are transferred to the buyer starting from the initially scheduled delivery date. From then on, the goods to be delivered are stored and insured at the buyer's own expense and risk.

9. Receipt of the goods

Without prejudice to any actions that may be taken against the transport contractor, any complaints concerning the quantity or nature of the goods shall be formulated in writing immediately on receipt thereof.

10. Notification of defects and obligations of the buyer

The only defects covered by guarantee are those related to materials or manufacturing. If the buyer notes any such defects, he shall notify the seller in writing. The said notification shall contain a list and a description of the defects enabling the seller to understand their nature and importance.

The buyer has the obligation to check the state of the products delivered as soon as he can in the normal course of his business. If, at that time, he discovers any apparent defects covered by the seller's guarantee, he shall notify the seller concerning such defects within a reasonable time.

Any defects that could not be detected at the time of the initial check and that are revealed later are deemed to be hidden defects. Such defects shall be notified to the seller within a reasonable time. To assert his rights in relation to such defects, the buyer must however act under the guarantee within the time limits indicated in art. 12 GTC.

To preserve his right to the guarantee, the buyer has the obligation to keep the defective goods or products in his possession. In the presence of hidden defects, he will, as far as possible, cease the use of the defective goods or products. He will facilitate the seller in every way in proceeding with the detection and correction of any defects. He will refrain in any case from taking action himself or from having third parties take action to this effect, unless expressly agreed otherwise in writing by the seller. Any expenses related to any actions taken by the seller are charged to the latter, to the extent that he finds a defect guaranteed under this article.

The right to the guarantee under art. 12 GTC lapses forthwith if the buyer violates any of the above-mentioned obligations.

11. Return of products with apparent defects

Products with apparent defects can be returned to the seller only on the basis of a written prior notification by the buyer. A qualitative and quantitative check will then be carried out on any products returned. Any such return will be accepted only if the products have not been used. Once the products have been checked, the seller will inform the buyer of his decision concerning the latter's complaints.

12. Guarantee for defects

Unless agreed otherwise, the products are guaranteed against defects of materials or manufacturing for a period of 12 months, starting from the delivery date.

If proof of such defects is given, the seller shall, at his own choice, either repair or replace the defective items as soon as possible, free of charge.

13. Exclusion from the guarantee

Any repair of damage, other than that performed under the guarantee for defects as specified under art. 12 GTC, is expressly excluded.

Any defects and deterioration caused by normal wear and tear or by an external accident (incorrect assembly, defective maintenance, abnormal use), or due to a modification of the product not contemplated or specified by the seller, are excluded from the guarantee.

Moreover, even if a defect covered by guarantee is recognised by the seller, the buyer may not claim damages for any losses of production, operating losses, business losses or any other kind of direct or indirect damage suffered.

14. Governing law and jurisdiction of courts

The GTC are governed exclusively by Swiss law for both their construction and performance. The rules of the Vienna Convention on international contracts of sale of goods are expressly excluded.

The only courts competent in the event of any dispute of any kind or objections concerning the formation and performance of the order are the courts of the place where the seller has his registered offices.

Paudex, 10 July 2001