

General Terms and Conditions of Sales and Supply as of September 1st 2009

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1. Delivery/Collection

- (1) If the contract stipulates „delivery“, the seller shall determine the date of delivery or, where applicable, collection of the goods within the period specified in the contract. The buyer is to be notified of the date of delivery at least 5 working days in advance, to be calculated from the day following such date of notice.
- (2) If the contract stipulates „buyer’s call“, the buyer shall determine the date of delivery within the period specified in the contract. He must give the seller notice of the date of collection at least 5 working days in advance.
- (3) Where the contract stipulates either „delivery“ or „collection“ of the goods pursuant to „buyer’s call“, the term „immediately“ shall mean 3 working days and the term „prompt“ 10 working days as from, but not including, the date of conclusion of the contract.
- (4) For contracts with agreement if „successive delivery“ or „successive collection“ the delivery or collection of the contracted quantity is to be made by approximately equal quantities during the period specified for such delivery or collection.
- (5) Part deliveries or part collections of the goods shall be allowed but not less than a minimum quantity of 23,000 kg. Each part delivery shall be considered a separate contract.
- (6) In case of any failure to comply with the date of delivery or collection the seller or, where applicable, the buyer shall be entitled to either insist on performance, or cancel that part of the contract which is yet to be performed or claim damages or non-performance, provided that any extension of the time limit for performance has expired. In stipulating any such period of 28 extension, not less than 3 working days must be allowed in respect of an „immediate“ delivery date and at least 6 working days where other periods of delivery have been agreed. A period of extension is not necessary where fixed-date transactions have been concluded.
- (7) Contracts shall be considered void if neither contracting party has given a notice of reminder to the other within one month following the expiry of the stipulated date of delivery or collection. Settlement of any payments due shall be made on the basis of the market price in force on the last working day of the month following the expiry of the delivery period. Any differences are to be refunded.
- (8) In case of strikes, lockouts, fire, bans on exports or imports or any other cases of „force majeure“ the party affected thereby shall be released from his obligation to comply with the agreed delivery or, where applicable, collection deadlines. Notice of any such “force majeure” is to be given to the other contracting party as soon as it becomes known. In the event that such a “force majeure” continues for a period of more than 30 days following the expiry date of delivery or collection as stipulated in the contract, both the seller and the buyer shall be entitled to give written notice of cancellation of the contract within the 7 working days following thereafter.
- (9) Any legal acts of an administrative nature issued after conclusion of contract (e.g. relating to taxes, customs duties, miscellaneous import and export charges, transport charges, or foodstuff law etc.) shall entitle the contracting party affected by the above to claim appropriate compensation.
- (10) In the event of the sale of non-customs cleared goods, all costs incurred in connection with customs clearance shall be for buyer’s account.
- (11) If the place of destination as contractually agreed is changed, any increase or decrease in costs ensuing therefrom shall be offset according to the difference in parity.

2. Conditions Governing Consignments and Insurance

- (1) Those Incoterms of the International Chamber of Commerce in force at the time of the conclusion of the contract shall be of application thereto.

3. Weight

- (1) The seller shall be entitled to deliver with a tolerance of 2% more or less of the contracted quantity, or 5% more or less if an „approximate“ quantity has been contracted. Each part delivery shall be considered as a separate contract. At time of delivery or part delivery of the goods, the seller shall be obliged to give notice of any deviation from the contract quantity. Performance of the contract shall be based on the weight established by weighing or measuring at dispatch or arrival, where applicable. Buyers and sellers or their authorized representatives shall be entitled to participate in the weighing or any measurement procedures. Axle weighing is not permitted.

4. Performance of Contractual Quantity

- (1) If a particular quantity, limited by two figures (from - up to), has been agreed upon, the mean quantity shall be the basis of contractual performance.

5. Quality

- (1) In the case of sale according to sample, the goods must, on average, correspond to the appearance and the analysis data of the purchase sample. If the goods are sold „subject approval of sample“ an agreement shall be made as to when the buyer must give his final decision. If the buyer fails to give due notice to the seller within the stipulated time limit, the sample shall be deemed to have been approved. Even in the absence of any special agreement, goods of sound and merchantable quality are to be supplied at all times. In the case of „tel quel“ transactions, the buyer shall be obliged to accept the goods irrespective of their quality provided that the delivered goods are in accordance with the description as specified in the contract.

6. Claims

- (1) In the event that the buyer has lodged a justified claim, he has a right of either reduction of the contract price or substitute delivery. The right of rescission is hereby excluded.
- (2) Any claims must be submitted within 5 working days after receipt of the goods. The right of substitute delivery is only given in cases where the goods are returned in their original shipped package(s). If the goods are affected by defects which cannot be determined by the purchaser himself without having to consult an expert beforehand (hidden defect), the purchaser shall retain the rights of warranty specified in lines 94 ff above if he appoints an expert without delay and ensures that his notice of claim has been served upon the seller within a period of 3 working days following discovery of any such defect(s). Under no circumstances are claims admissible if the goods have been put into production or have been transported from the original place of destination unless independent sealed samples are available for the final ascertainment of quality. The parties shall be entitled to participate at sampling. In the event of warranted characteristics being the subject of contract, these shall be subject to the provisions of general law. Any rights of claim of persons suffering damage or loss arising from the product liability law shall remain unaffected hereby.

7. Time Limits

- (1) Working days as stipulated by these terms and conditions are the weekdays Monday to Friday with the exception of the public holidays as well as 24th and 31st December. The day of conclusion of the contract or, where applicable, the day upon receipt of any notice stipulating a time limit, shall not be included in the computation of the relevant period of time or deadline. Any declarations which are subject to time limits must reach the recipient not later than 16:00 hour on the final day prior to expiry of the time limit. Public holidays which differ according to country or location shall be construed to apply only in favour of that contractual party which has to give or receive notice or undertake any specific action on such a day.



8. Buyer's Default of Payment

- (1) If the buyer has suspended his payments or if a situation arises equal to such suspension of payments, all outstanding debts and claims against him shall become due for immediate payment. The seller is entitled to demand payment in advance for any further consignments. If such advance payments are not made, the seller will be entitled to invoke the rights as specified in 1. (6) & (7) of this text. Sellers are entitled to set off any liquidated claim inclusive unpaid sales prices against Buyers whether it is related to this or any other contract between the parties. The same regulation applies to liquidated claims inclusive unpaid sales prices of any company belonging to the Cremer Gruppe and mentioned on the homepage www.cremer-gruppe.com against Buyers or to any of their subsidiaries or related companies whatsoever. Sellers shall have a lien on all cargo sold to Buyers or to any of their subsidiaries or related companies whatsoever and on all purchase prices and/or any claims of Buyers against Sellers, their subsidiaries or related companies.
- (2) Any company owned by Cremer Holding GmbH & Co. KG and mentioned on the homepage www.cremer-gruppe.com shall also have a lien on all cargo sold to Buyers or to any of their subsidiaries or related companies whatsoever and on all purchase prices and/or any claims of Buyers against Sellers, their subsidiaries or related companies.

9. Reservation of Title

- (1) The goods remain the legal property of the seller until all claims against the buyer arising from the mutual business relationship are settled (hereinafter referred to as goods supplied or delivered under reservation of title). Any conditional, qualified or future claims are included. Where a current account exists, the reservation of title shall operate as security for the balance owing to the seller at the time in question.
- (2) The buyer shall only be permitted to resell the goods supplied under a reservation of title or subject them to any treatment, processing or admixture on condition that he keeps detailed records of the whereabouts of such goods at any particular time with specification of the quantities and values involved. In case of any default he shall be obliged to present to the seller satisfactory evidence of the above at his own expense. Any treatment or processing of the goods delivered under reservation of title shall be undertaken in all cases on behalf of the seller, but without any additional liabilities arising for the seller. The seller shall also acquire ownership of the new product which results from the treatment or processing of the goods supplied. In case of processing with other goods not belonging to the seller, the seller shall have a right of joint ownership in the new product which shall correspond to the proportional value of the goods supplied under reservation of title as compared to the value of the other processed goods at time of processing. The value of the goods delivered under reservation of title shall be defined as the purchase price invoiced by the seller to the buyer, this definition, also applying hereinafter. In the event that goods supplied under reservation of title are mixed or combined with other substances or materials, the buyer shall already, at this time, assign to the seller his proprietary rights or, where applicable, joint ownership in the article or substance resulting from such admixture or combination by virtue hereof, and shall preserve such rights (hereinafter likewise referred to as goods supplied or delivered under reservation of title) on behalf of the seller.
- (3) The buyer is authorized to resell the goods delivered under reservation of title within the normal course of his business, provided that such resale is also made under reservation of title. He is not permitted to pledge or mortgage the goods as security to third parties.
- (4) The buyer herewith assigns to the seller as security all claims and ancillary rights accruing to him by virtue of the resale of such goods, irrespective of whether such resale is effected prior or subsequent to the processing, admixture or combination of the goods with other materials or substances.
- (5) In case goods delivered under reservation of title are themselves, irrespective of their condition, resold by the buyer together with other goods not belonging to the seller for a total price, the assignment of the buyer's claim by virtue of such resale, which has already been executed by virtue of the foregoing, shall be limited to that amount which the seller has charged to the buyer for those goods originally supplied by him under reservation of title.
- (6) In the event that the buyer receives drafts (including bills of exchange) or cheques from his customer by virtue of such resale, he herewith assigns to the seller those claims accruing to him from such drafts or cheques in the amount of the debt arising from the resale transaction which has already been assigned to the seller in accordance with 9. (4).
- (7) Title to the drafts and/or cheques concerned is herewith assigned to the seller by the buyer who shall hold in trust such drafts or cheques on behalf of the seller. The buyer shall be authorized to collect the assigned claims until such authorization is revoked. In the event of such revocation, the buyer shall, at the request of the seller, furnish any information required by the latter and give due notification to his customers of the transfer of the rights of claim involved and hand over any relevant cheques and drafts issued by his customers to the seller. In the event of buyer's default of payment he shall, at the request of the seller, be obliged to return the goods delivered under reservation of title to the seller. The buyer shall furthermore give immediate notice to the seller by cable or telex of any attachment which has been exercised by third parties on the goods supplied under reservation of title and/or any claims assigned to the seller. At the written request of the buyer, the seller shall undertake to release securities, of his own choice to the extent that the value of the securities provided in his favour exceed by more than 20% the value of open debts and/or claims owed by the purchaser, for which security is still required.

10. Court of Arbitration

- (1) The **Courts of Hamburg** have the **exclusive jurisdiction** for any dispute out of or in connection with this contract.

11. Applicable Law

- (1) The law of the United Nations Conventions of the formation of contracts for the international sale of goods as well as the laws of the Federal Republic of Germany shall apply to the contract and any legal relations between the seller and the buyer shall be governed by that law.

12. Escape or Legal Invalidity Clause

- (1) In the event that any individual clauses of these terms and conditions are, or shall become, invalid, this shall not affect the validity of the remaining clauses. An invalid condition shall be deemed to have been replaced by such provision which is legally valid and corresponds nearest to the economic purpose of the clause originally deemed invalid. In the event of any dispute as to the interpretation of these terms and conditions, the German version of this text shall prevail over any translations thereof.

