



# General Terms of Delivery

of Commend International GmbH · Saalachstrasse 51 · 5020 Salzburg · Austria

## 1. Scope

These general terms apply to legal transactions between companies with regard to the delivery of goods, and analogously also to the provision of services.

## 2. Offer

- 2.1 Offers of the seller shall be considered non-binding.
- 2.2 Any documentation regarding offers and projects must neither be reproduced nor made available to third parties without the seller's consent. The return of such documents may be requested at any time and they shall be returned to the seller immediately once the order has been placed elsewhere.

## 3. Contract conclusion

- 3.1 The contract is deemed concluded once the seller has sent a written order confirmation or consigned a delivery after receipt of the order.
- 3.2 No warranty claims may be derived nor liabilities established from information provided in catalogues, brochures, advertising material, and written or oral statements not included in the contract.
- 3.3 Any subsequent amendments and supplements to these terms shall be confirmed in writing to be valid.

## 4. Delivery

- 4.1 The delivery period shall commence on the latest of the following dates:
  - a) Date of order confirmation
  - b) Date of fulfilment of all technical, commercial and other requirements incumbent upon the buyer;
  - c) Date on which the seller receives an advance payment or security that needs to be provided before delivery of the goods.
- 4.2 Approvals by authorities and third parties that might be required for executing installations shall be obtained by the buyer. If such approvals are not obtained in time, the delivery period shall be extended accordingly.
- 4.3 The seller shall be entitled to effect and charge partial or advance deliveries. If delivery on call has been agreed, the goods shall be deemed called up 1 year after the order was placed at the latest.
- 4.4 In case any unforeseeable circumstances or circumstances outside the parties' sphere of influence such as, for example, all instances of force majeure, occur, which prevent compliance with the delivery period agreed upon, the latter shall be extended by the duration of such circumstances in any case; this shall include, in particular, armed conflicts, official interventions and bans, transport and customs delays, transport damage, shortage of power and raw materials, industrial disputes and the loss of a crucial supplier that is difficult to replace. These above mentioned circumstances shall also be deemed reasons for extending the delivery period if they affect sub-suppliers.
- 4.5 If, upon conclusion of the contract, a contractual penalty for default in delivery has been agreed, such penalty shall be paid in compliance with the following provision and, for the rest, any deviation from this provision in individual respects shall not affect its applicability:
- 4.6 In case of a delay in performance that has demonstrably occurred solely through the fault of the seller, the buyer shall be entitled to claim, for every full week of delay, a contractual penalty of no more than ½ %, up to a maximum of 5 %, of the value of that part of the overall delivery which cannot be used due to the delay in delivery of an essential part, provided a loss was incurred by the buyer in that amount.
- 4.7 Any further claims from the delay shall be excluded.

4.8 If acceptance has been agreed, the goods shall be deemed fully accepted upon commencement of their use in the context of the buyer's business operation at the latest.

4.9 The seller shall be entitled to use subcontractors with regard to all deliveries and elements of the performance, provided the seller informs the buyer accordingly.

## 5. Transfer of risk and place of performance

- 5.1 Unless otherwise agreed, the delivery of the goods shall be deemed sold EXW acc. to INCOTERMS' 2010.
- 5.2 The place of performance of services is primarily the place specified in the written order confirmation, secondarily it is the place where the service is actually performed by the seller. The risk of a performance or partial performance agreed shall vest in the buyer upon performance being effected.

## 6. Payment

- 6.1 If no terms of payment have been agreed, 1/3 of the price shall be due upon receipt of the order confirmation, 1/3 after expiry of half the delivery period, and the rest upon delivery. Notwithstanding the above, the VAT included in the invoice shall be paid no later than 30 days following invoicing in each case.
- 6.2 In case of partial invoices, the partial payments shall be due upon receipt of the relevant invoice. This shall also apply to settlement amounts arising due to subsequent deliveries or other agreements beyond the original final amount, notwithstanding the terms of payment agreed for the main delivery.
- 6.3 Payments shall be made in the currency agreed to the seller's paying office without any deductions or charges. Any cheques or bills of exchange shall only be accepted as an undertaking to pay. All associated interest and expenses (such as debiting and discount charges) shall be borne by the buyer.
- 6.4 The buyer shall not be entitled to retain or offset payments on account of warranty claims or other counter claims.
- 6.5 A payment shall be deemed made on the date the seller is able to dispose of the amount paid.
- 6.6 If the buyer is in default of any agreed payment or other performance from this or any other legal transactions, the seller may, without prejudice to any other rights the seller may have,
  - a) postpone fulfilment of its own obligations until said payment or other performance has been effected, and claim an appropriate extension of the delivery period,
  - b) demand payment of all outstanding receivables from this or other legal transactions and charge statutory default interest plus VAT for these amounts, with effect from the respective due date, unless the seller is able to provide proof of any additional costs,
  - c) in the event of qualified insolvency, i.e. after two instances of default, perform other legal transactions only against cash in advance. At any rate, the seller shall be entitled to invoice pretrial expenses, in particular dunning expenses and lawyers' fees, according to applicable statutory provisions.
- 6.7 The seller shall retain title to all goods delivered until full payment of the amounts invoiced plus interest and costs. To secure the seller's purchase price claim, the buyer hereby assigns to the seller its claims from reselling goods subject to retention of title, even after they have been further processed, transformed or mixed. The buyer shall be authorised to dispose of the goods subject to retention of title in case of reselling with payment of the purchase price being deferred, on the condition that the buyer informs the secondary buyer about the assignment for security, concurrently with the resale, or notes down the assignment in its books. Upon request, the buyer shall inform the seller about the claim

# General Terms of Delivery

of Commend International GmbH · Saalachstrasse 51 · 5020 Salzburg · Austria

assigned and the relevant debtor and provide all information and documents required for collection of the claim and to notify the third-party debtor about the assignment. In case of seizure or other claims being made, the buyer shall be obliged to refer to the seller's title and to notify the latter immediately.

6.8 The seller shall be entitled to submit the invoice electronically.

## 7. Warranty and assumption of responsibility for defects

7.1 In case the terms of payment agreed are complied with, the seller shall be obliged, under the following provisions, to eliminate any defect existing at the time of handover that is detrimental to functionality and based on faulty design or material or poor workmanship. No warranty claims may be derived from information provided in catalogues, brochures, advertising material and written or oral statements not included in the contract.

7.2 Unless otherwise agreed, the statutory period of warranty shall apply. This shall also apply to objects of delivery and performance that are firmly attached to a building structure or to the ground. The warranty period shall commence at the time the risk is transferred under item 5.

7.3 If delivery or performance is delayed for reasons outside the sphere of influence of the seller, the warranty period shall commence two weeks after the latter's willingness to delivery and/or perform.

7.4 The warranty claim is contingent upon the prerequisite that the buyer has reported any defects that have occurred in writing in due time and that the seller receives this report. The buyer shall provide evidence that the defect exists within an appropriate period of time, in particular by providing to the seller the documents and/or data available on the buyer's premises. In the event of a defect subject to the warranty obligation under item 7.1, the seller shall, at its discretion, rectify the defective good or the defective part at the place of performance or arrange for it to be sent to its own place for rectification, or reduce the price accordingly.

7.5 Any supporting staff, lifting devices, scaffolding and incidentals required for performing warranty work on the buyer's premises shall be provided. Replaced parts shall pass into the seller's ownership.

7.6 If goods are manufactured by the seller based on design descriptions, drawings, models or other specifications provided by the buyer, the seller's liability shall only extend to execution as agreed.

7.7 Unless otherwise agreed, the warranty shall not include any defects that result from arrangement and assembly not effected by the seller, insufficient adjustment, non compliance with installation requirements and conditions of use, excessive stress on parts beyond the performance specified by the seller, negligent or incorrect treatment and use of inappropriate operating material; this shall also apply to defects resulting from material provided by the buyer. Nor shall the seller be liable for damage resulting from acts by third parties, atmospheric discharges, overvoltage and exposure to chemicals. The warranty shall not cover the replacement of parts that are subject to natural wear.

7.8 The warranty shall lapse immediately once the buyer itself or a third party not explicitly authorised by the seller effects any modifications or repairs to the products delivered without written consent by the seller.

7.9 Provisions 7.1 to 7.8 shall apply accordingly to every instance of assuming responsibility for defects on other legal grounds.

## 8. Rescission of the contract

8.1 Unless any more specific provision was agreed, the buyer shall be entitled to rescind the contract for default in delivery resulting from gross negligence on the part of the seller and the unsuccessful expiry of a reasonable period of grace granted. Rescission shall be declared by means of a registered letter.

8.2 Notwithstanding its other rights, the seller shall be entitled to rescind the contract

- a) if the execution of the delivery and/or commencement or continuation of the performance becomes impossible for reasons within the sphere of responsibility of the buyer or is delayed despite an appropriate period of grace being granted,
- b) if concerns with regard to the solvency of the buyer have been raised and the latter does neither make an advance

payment upon request by the seller nor provide suitable security before delivery,

- c) if the delivery period is extended due to the circumstances mentioned in item 4.4 for more than half of the delivery period originally agreed, but for at least 6 months, or
- d) if the buyer does not or not duly meet the obligations imposed upon it under item 13.

8.3 Rescission may also be declared with regard to an outstanding part of the delivery or performance for the reasons listed above.

8.4 If insolvency proceedings are opened with respect to the buyer's assets or a request for initiation of insolvency proceedings is rejected for lack of sufficient assets, the seller shall be entitled to rescind the contract without granting a period of grace. If such rescission is declared, it shall become effective immediately once the decision is made not to continue the company. If the company is continued, the rescission shall become effective only 6 months after opening of insolvency proceedings or after rejection of the request for initiation for lack of assets. In any case, the contract shall be terminated with immediate effect, provided that the insolvency law governing the buyer does not provide for otherwise or if termination of the contract is essential to avoid serious financial disadvantages for the seller.

8.5 Notwithstanding the seller's compensation claims including pretrial costs, in the event of rescission, every performance or partial performance already effected shall be settled and paid as contractually agreed. This shall also apply to any delivery or performance not yet accepted by the buyer as well as for any preparatory measures effected by the seller. The seller shall also be entitled to request the return of products already delivered instead.

8.6 Any other consequences of rescission shall be excluded.

8.7 Any claims asserted by the buyer for "laesio enormis", error and frustration of contract shall be excluded.

## 9. Disposal of waste electrical and electronic equipment

The buyer domiciled in Austria shall ensure that the seller is provided with all relevant information enabling it to meet its obligations as a manufacturer/importer according to applicable statutory provisions.

## 10. Seller's liability

10.1 The seller shall be liable for damage outside the sphere of the "Produkthaftungsgesetz" [Austrian product liability act] - in line with statutory regulations - only if its intent or gross negligence is proven. Total liability of the seller in cases of gross negligence shall be limited to the lower of the net contract value or EUR 500,000. The seller's liability shall be limited to the lower of 25 % of the net contract value or EUR 125,000 per event of loss.

10.2 Unless otherwise agreed, any liability for slight negligence, with the exception of personal injury, and compensation for consequential damage, pure financial loss, indirect loss, production downtime, cost of financing, cost of substitute power, loss of power, data or information, lost profit, savings not achieved, interest losses and losses from third-party claims asserted against the buyer shall be excluded.

10.3 Unless otherwise agreed, all forms of compensation shall be excluded in case of non compliance with any requirements for assembly, commissioning and use (such as those included in operating instructions) or official authorisation requirements.

10.4 If contractual penalties have been agreed, any claims of the buyer beyond that arising from the relevant title shall be excluded.

10.5 The provisions of item 10 shall finally settle all claims of the buyer vis-à-vis the seller, on any legal ground and title whatsoever, and shall also apply to all staff members, subcontractors and sub-suppliers of the seller.

## 11. Industrial property rights and copyright

11.1 If a product is manufactured by the seller based on design descriptions, drawings, models or other specifications provided by the buyer, the buyer shall fully indemnify the seller in the event of any violation of property rights.

11.2 Final planning documents such as plans, drawings and other technical documentation shall remain the intellectual property of the seller at all times, as shall samples, catalogues, brochures, images and the like, and shall be subject to the relevant statutory provisions with regard to reproduction, imitation, competition etc. Item 2.2 shall also apply to final planning documents.

# General Terms of Delivery

of Commend International GmbH · Saalachstrasse 51 · 5020 Salzburg · Austria

## 12. Assertion of claims

All claims of the buyer shall be asserted in court within 3 years after performance of the services, otherwise they shall be forfeited, unless other deadlines are provided for by mandatory statutory provisions.

## 13. Compliance with export regulations

13.1 When passing on the goods supplied by the seller to third parties, together with the pertinent documents, regardless of the manner in which the latter are provided or the services performed by the seller, including technical support of any kind, the buyer shall comply with the applicable provisions of the national and international (re-)export regulations. In any case, the buyer shall comply with the (re-)export regulations of the seller's country of domicile, the European Union, the United Kingdom of Great Britain and Northern Ireland and the United States of America when passing on the goods and/or services to third parties.

13.2 If required for export control checks, the buyer shall immediately provide to the seller upon request all necessary information, among others about the final recipient, final destination and purpose of use of the goods and/or services.

## 14. General information

14.1 If individual provisions of the contract or of these terms & conditions should be invalid, this shall not affect the validity of the remaining provisions. The invalid provision shall be replaced with a valid provision that approximates the intended objective as closely as possible.

14.2 The German language version shall be deemed the authentic version of the terms & conditions and shall be used to interpret the contract.

## 15. Place of jurisdiction and applicable law

The exclusive place of jurisdiction for resolving all disputes arising from the contract - including those regarding its existence or non-existence - shall be the court with subject matter jurisdiction at the seller's head office in Salzburg. The contract shall be governed by Austrian law to the exclusion of conflict of law rules. Application of the UNCITRAL UN Convention on Contracts for the International Sale of Goods shall be excluded.

## 16. Reservation clause

Performance of the contract on the part of the seller shall be subject to the reservation that no obstacles exist under national or international (re-)export regulations, in particular no embargoes and/or other sanctions.

September 2019 edition