

INTERNATIONAL SALE CONTRACT

Manufactured Goods

B. GENERAL CONDITIONS

Art. 1 General

- 1.1 These General Conditions are intended to be applied together with the Specific Conditions (Part A) of the ICC Model International Sale Contract (Manufactured Goods), but they may also be incorporated on their own into any sale contract. Where these General Conditions (Part B) are used independently of the said Specific Conditions (Part A), any reference in Part B to Part A will be interpreted as a reference to any relevant specific conditions agreed by the parties. In case of contradiction between these General Conditions and any specific conditions agreed upon between the parties, the specific conditions shall prevail.
- 1.2 Any questions relating to this contract which are not settled by the provisions contained in the contract itself (i.e. these General Conditions and any specific conditions agreed upon by the parties) shall be governed:
- A. by the United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention of 1980, hereafter referred to as CISG), and
 - B. to the extent that such questions are not covered by CISG and that no applicable law has been agreed upon, by reference to the law of the country where the Seller has its place of business.
- 1.3 Any reference made to a publication of the International Chamber of Commerce is deemed to be made to the version current at the date of conclusion of the contract.
- 1.4 No modification of the contract is valid unless agreed or evidenced in writing. However, a party may be precluded by its conduct from asserting this provision to the extent that the other party has relied on that conduct.
- 1.5 Any limitation to remedies in case of breach of contract shall be ineffective in cases of fraud or gross negligence of the breaching party.

Art. 2 Characteristics of the goods

- 2.1 It is agreed that any information relating to the goods and their use, such as weights, dimensions, capacities, prices, colours and other data contained in catalogues, prospectuses, circulars, advertisements, illustrations, price-lists of the Seller, shall not take effect as terms of the contract unless expressly referred to in the contract.
- 2.2 Unless otherwise agreed, the Buyer does not acquire any property rights in software, drawings, etc. which may have been made available to it. The Seller also remains the exclusive owner of any intellectual or industrial property rights relating to the goods.
- 2.3 It is agreed that the goods are suitable for the purpose for which they are intended by their very nature or which is evident from the contract of sale.
- 2.4 If express reference is made in the contract of sale to technical, safety, quality or other regulations and documents clearly designated in the agreement, even if not attached to the contract, the Seller shall be deemed to have knowledge of these. The Seller shall bear the costs related to, and obtain the necessary permission, permits or licences in good time required for carrying out the contract and for complying with the conditions stipulated therein.

Art. 3 Inspection of the goods before shipment

If the parties have agreed that the Buyer is entitled to inspect the goods before shipment, the Seller must notify the Buyer within a reasonable time before the shipment that the goods are ready for inspection at the agreed place.

Art. 4 Price

- 4.1 The price indicated under Box A-2 (contract price) includes any costs which are at the Seller's charge according to this contract. However, should the Seller bear any costs which, according to this contract, are for the Buyer's account (e.g. for transportation or insurance under FCA, EXW, FAS or FOB), such sums shall not be considered as having been included in the price under Box A-2.
- 4.2 If no price has been agreed, the Seller's current list price at the time of the conclusion of the contract shall apply. In the absence of such a current list price, the price generally charged for such goods at the time of the conclusion of the contract in the Seller's currency shall apply.
- 4.3 Unless otherwise agreed in writing, the price does not include indirect taxes (VAT, sales tax, excise duties, etc.), and is not subject to price adjustment.

Art. 5 Payment conditions

- 5.1 Unless otherwise agreed in writing, or implied from a prior course of dealing between the parties, payment of the price and of any other sums due by the Buyer to the Seller shall be on open account and time of payment shall be 30 days from the date of invoice. The amounts due shall be transferred, unless otherwise agreed, by telegraphic transfer or remittance to the Seller's bank in the Seller's country for the account of the Seller and the Buyer shall be deemed to have performed its payment obligations when the respective sums due have been received by the Seller's bank in immediately available funds.
- 5.2 If the parties have agreed on payment in advance, without further indication, it will be assumed that such advance payment, unless otherwise agreed, refers to the full price, and that the advance payment must be received by the Seller's bank in immediately available funds at least 30 days before the agreed date of shipment or the earliest date within the agreed shipment period. If advance payment has been agreed only for a part of the contract price, the payment conditions of the remaining amount will be determined according to the rules set forth in this article.
- 5.3 If the parties have agreed on payment by documentary credit, then, unless otherwise agreed, the Buyer must arrange for a documentary credit in favour of the Seller to be issued by a reputable bank, subject to the Uniform Customs and Practice for Documentary Credits (UCP 600) published by the International Chamber of Commerce, and to be notified at least 30 days before the agreed date of shipment or at least 30 days before the earliest date within the agreed shipment period. Unless otherwise agreed, the documentary credit shall be payable at sight and allow transshipments but no partial deliveries.
- 5.4 If the parties have agreed on payment by documentary collection, then, unless otherwise agreed, documents will be tendered against payment (D/P) and the tender will in any case be subject to the Uniform Rules for Collections (URC 522) published by the International Chamber of Commerce.
- 5.5 If the parties have agreed on payment against the security of a Bank Payment Obligation, then, unless otherwise agreed, the Buyer must arrange for the Seller to receive an assurance of payment in accordance with the agreed payment terms in the form of a Bank Payment Obligation to be issued by a bank in favour of the Seller's Bank, subject to the URBPO rules (Uniform Rules for Bank Payment Obligations) published by the International Chamber of Commerce, and to be notified at least 30 days before the agreed date of shipment or at least 30 days before the earliest date within the agreed shipment period. Unless otherwise agreed, the Bank Payment Obligation shall be payable at sight and allow transshipments but no partial deliveries.

5.6 To the extent that the parties have agreed that payment is to be backed by a bank guarantee, the Buyer is to provide, at least 30 days before the agreed date of shipment or at least 30 days before the earliest date within the agreed shipment period, a first demand bank guarantee subject to the Uniform Rules for Demand Guarantees (URDG 758) published by the International Chamber of Commerce, or a standby letter of credit subject either to such Rules, to the International Standby Practices (ISP 98) or to the Uniform Customs and Practice for Documentary Credits (UCP 600) published by the International Chamber of Commerce, in any case issued by a reputable bank.

Art. 6 Interest in case of delayed payment

6.1 If a party does not pay a sum of money when it falls due the other party is entitled to interest upon that sum from the time when payment is due to the time of payment.

6.2 Unless otherwise agreed, the rate of interest shall be 5% above the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place of payment, or where no such rate exists at that place, then the same rate in the state of the currency of payment.

Art. 7 Retention of title

If the parties have validly agreed on retention of title, the goods shall, notwithstanding delivery and the passing of risk in the goods, remain the property of the Seller until the complete payment of the price, or as otherwise agreed.

Art. 8 Contractual term of delivery

Unless otherwise agreed, delivery shall be FCA Seller's premises (Incoterms® 2010 Rules).

Art. 9 Documents

Unless otherwise agreed, the Seller must provide the documents (if any) indicated in the applicable Incoterms® rule or, if no Incoterms® rule is applicable, according to any previous course of dealing.

Art. 10 Late-delivery, non-delivery and remedies therefore

10.1 If the parties have agreed upon a cancellation date in Box A-9, the Buyer may declare the contract avoided by notification to the Seller in case delivery has not occurred by such cancellation date for any reason whatsoever (including a force majeure event).

10.2 When there is delay in delivery of any goods, the Buyer is entitled to claim performance and liquidated damages equal to 0.5% or such other percentage as may be agreed of the price of those goods for each commenced week of delay. Liquidated damages for delay shall not exceed 5% of the price of the delayed goods or such maximum amount as may be agreed in Box A-10.

10.3 When article 10.1 does not apply and the Seller has not delivered the goods by the date on which the Buyer has become entitled to the maximum amount of liquidated damages under article 10.2, the Buyer may at any time ask for performance or declare the contract to be avoided in writing

10.4 In case of avoidance of the contract under article 10.1 or 10.3 the Buyer is entitled to claim damages which in the aggregate do not exceed the price of the non-delivered goods, or such maximum amount as may be agreed in Box A-11.

10.5 The remedies under this article exclude any other remedy for delay in delivery or non-delivery.

Art. 11 Non-conformity of the goods

- 11.1 The Buyer shall examine the goods as soon as possible after their arrival at the place of business of the Buyer or any other agreed place of examination and shall notify the Seller in writing of any lack of conformity, specifying the nature of the lack of conformity of the goods within a reasonable time from the date when the Buyer discovers or ought to have discovered the lack of conformity. In any case the Buyer shall have no remedy for lack of conformity if it fails to notify the Seller thereof within 2 months from the date of arrival of the goods at the place of business of the Buyer or the otherwise agreed place of examination, if any.
- 11.2 Goods will be deemed to conform to the contract despite minor discrepancies which are usual in the particular trade or through course of dealing between the parties.
- 11.3 Where goods are non-conforming, the Seller shall at its option and provided it can do so without unreasonable delay and without causing the buyer unreasonable inconvenience:
- (a) replace the goods with conforming goods, without any additional expense to the Buyer, or
 - (b) repair the goods, without any additional expense to the Buyer.
- The Buyer will be entitled to liquidated damages for the delay due to replacement or repair as specified under article 10.2 or as may be agreed in Box A-10.
- 11.4 If the Seller has failed or refused to properly perform its duties under article 11.3 within a reasonable period, and provided the parties have not agreed on a price reduction, the Buyer may resort to the remedies provided for by the CISG having regard to the terms laid down in this contract. As to the damages proven by the Buyer the maximum amount is limited to the contractually agreed price of the non-conforming goods.
- 11.5 Unless otherwise agreed in writing, the remedies under this article 11 exclude any other remedy for non-conformity.
- 11.6 Unless otherwise agreed in writing, actions for lack of conformity will be taken by the Buyer only before arbitral tribunals, and only within a delay of 6 months from the date of arrival of the goods at the place of examination. It is expressly agreed that after the expiry of such term, the Buyer shall not plead non-conformity of the goods, or make a counter-claim thereon, in defence to any action taken by the Seller against the Buyer for non-performance of this contract.

Art. 12 Cooperation between the parties

- 12.1 The Buyer shall promptly inform the Seller of any claim made against the Buyer by its customers or third parties concerning the goods delivered or industrial or intellectual property rights related thereto.
- 12.2 The Seller shall promptly inform the Buyer of any claim which may involve the product liability of the Buyer.

Art. 13 Force majeure

- 13.1 A party is not liable for a failure to perform any of its obligations in so far as it proves:
- (a) that the failure was due to an impediment beyond its control, and
 - (b) that it could not reasonably be expected to have taken into account the impediment and its effects upon its ability to perform at the time of the conclusion of the contract, and
 - (c) that it could not reasonably have avoided or overcome the impediment or its effects.
- 13.2 A party seeking relief shall, as soon as practicable after the impediment and its effects upon that party's ability to perform become known to it, give notice to the other party of such impediment and its effects on that party's ability to perform. Notice shall also be given when the ground of relief ceases.

Failure to give either notice makes the party thus failing liable in damages for loss which otherwise could have been avoided.

- 13.3 Without prejudice to article 10.2, a ground of relief under this clause relieves the party failing to perform from liability in damages, from penalties and other contractual sanctions and from the duty to pay interest on money owing as long as and to the extent that the ground subsists.
- 13.4 If the grounds of relief subsist for more than three (3) months, either party shall be entitled to declare the contract to be avoided without notice.

Art. 14 Resolution of disputes

- 14.1 The parties may at any time, without prejudice to any other proceedings, seek to settle any dispute arising out of or in connection with the present contract in accordance with the ICC ADR Rules.
- 14.2 Unless otherwise agreed in writing, all disputes arising out or in connection with the present contract shall provide for the final and binding settlement by arbitration with the appropriate legal authorities of the domiciliation of the salesman, and in French, by one or several arbitrators appointed in accordance with the said Rules. Contractors agree that only French law is applicable.
- 14.3 All arbitration and/or all arbitration clause prevent expressly any party from requesting interim or conservatory measures from state courts. In addition, all disputes arising out or in connection with the present contract will be subject only to arbitration, under the French laws and regulations.