

Conditions of Sale ITC Indicia Trading & Consulting bvba



A. GENERAL CONDITIONS

Art. 1 GENERAL

1.1 Any reference made to trade terms (such as EXW, FOB, CIF, etc.) is deemed to be made to the relevant term of Incoterms published by the International Chamber of Commerce (2010)

1.2 The contractual relation between parties is governed by present conditions. Other conditions or stipulations mentioned on forms or documents issued by the buyer, are not applicable. Departures and additions to present conditions are null and void, unless mutual written consent. No modification of the Contract is valid unless agreed in writing by both parties.

1.3 Every order placed by the Buyer shall, on acceptance by the Seller, be treated as a separate contract. In the event of there being more than one contract in course of performance between the Seller and the Buyer any question, dispute or difficulty, which may arise in respect of one of such contracts, or terms on which it may be settled, shall not affect in any way the performance of the other contract or contracts, nor shall the Buyer be entitled to exercise in relation to any such other contract any counter claim or right of set off arising under one contract.

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, brands, etc. which may have been made available to him. The Seller also remains the exclusive owner of any intellectual or industrial property rights relating to the goods.

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 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 shall apply.

4.2 Unless otherwise agreed in writing, the price does not include VAT, and is not subject to price adjustment.

4.3 The price indicated in this contract (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 EXW or FCA), such sums shall not be considered as having been included in the price under the specific conditions and shall be reimbursed by the Buyer.

ART. 5 PAYMENT CONDITIONS

5.1 Unless otherwise agreed in writing between the parties, payment of the price and of any other sums due by the Buyer to the Seller shall be pre-paid or guaranteed by an Irrevocable Confirmed L/C, confirmed by a first class Belgian Bank payable at sight, allowing partial and transshipments, valid 3months beyond foreseen delivery time. The amounts due shall be transferred, unless otherwise agreed, by teletransmission 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 his 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 delivery or the earliest date within the agreed delivery 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 published by the International Chamber of Commerce, and to be notified at least 30 days before the agreed date of delivery or at least 30 days before the earliest date within the agreed delivery period. Unless otherwise agreed, the documentary credit shall be payable at sight and allow partial shipments and transshipments.

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 published by the International Chamber of Commerce.

5.5 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 delivery or at least 30 days before the earliest date within the agreed delivery period, a first demand bank guarantee subject to the Uniform Rules for Demand Guarantees published by the International Chamber of Commerce, or a standby letter of credit subject either to such Rules or to the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce, in either case issued by a reputable bank.

ART. 6 INTEREST IN CASE OF DELAYED PAYMENT

6.1 If the Buyer does not pay a sum of money when it falls due the Seller 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 2% 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. In the absence of such a rate at either place the rate of interest shall be the appropriate rate fixed by the law of the State of the currency of payment.

ART. 7 RETENTION OF TITLE

7.1 Risk in the goods shall pass on to the Buyer on delivery but the goods shall remain the property of the Seller until the complete payment of the price, or as otherwise agreed.

7.2 If at any time any sum remains unpaid by the Buyer, whether due for payment or not, then any goods supplied by the Seller remain the property of the Seller and may be removed to satisfy the outstanding debt.

ART. 8 CONTRACTUAL TERM OF DELIVERY

Unless otherwise agreed, delivery shall be "Ex Works" (EXW).

ART. 9 DOCUMENTS

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

ART. 10 LATE-DELIVERY, NON-DELIVERY AND REMEDIES THEREFOR

10.1 The Seller cannot be held responsible for late-delivery, non-delivery and remedies therefor. From the moment the Seller is made aware that he will not meet the delivery time he will inform the Buyer immediately.

ART. 11 NON-CONFORMITY OF THE GOODS

11.1 The Buyer shall examine the goods as soon as possible after their arrival at destination and shall notify the Seller in writing of any lack of conformity of the goods within 15 days from the date of arrival. In any case the Buyer shall have no remedy for lack of conformity if he fails to notify the Seller thereof within 6 months after the arrival of the goods.

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 but the Buyer will be entitled to any abatement of the price usual in the trade or through course of dealing for such discrepancies.

11.3 Where goods are non-conforming (and provided the Buyer, having given notice of the lack of conformity in compliance with article 11.1, does not elect in the notice to retain them), the Seller shall at his option:

- (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

11.3 Where the Buyer elects to retain non-conforming goods, he shall be entitled to a sum equal to the difference between the value of the goods at the agreed place of destination if they had conformed with the Contract and their value at the same place as delivered, such sum not to exceed 15% of the price of those goods.

11.5 Unless otherwise agreed in writing, no action for lack of conformity can be taken by the Buyer, whether before judicial or arbitral tribunals, after 6 months from the date of arrival of the goods. It is expressly agreed that after the expiry of such term, the Buyer will not plead non-conformity of the goods, or make a counter-claim thereon, in defense to any action taken by the Seller against the Buyer for non-performance of this Contract.

11.6 Unless otherwise agreed in writing, the remedies under this article 11 are exclusive of any other remedy for non-conformity.

ART. 12 COOPERATION BETWEEN THE PARTIES

12.1 The Buyer shall promptly inform the Seller of any claim made against the Buyer by his customers or third parties concerning the goods delivered or intellectual property rights related thereto.

12.2 The Seller will 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 his obligations in so far as he proves:

- (a)** that the failure was due to an impediment beyond his control, and
- (b)** that he could not reasonably be expected to have taken into account the impediment and its effects upon his ability to perform at the time of the conclusion of the Contract, and
- (c)** that he could not reasonably have avoided or overcome it or its effects.

13.2 A party seeking relief shall, as soon as practicable after the impediment and its effects upon his ability to perform become known to him, give notice to the other party of such impediment and its effects on his 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 A ground of relief under this clause relieves the party failing to perform from liability in damages, from penalties and other contractual sanctions, except 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 six months, either party shall be entitled to terminate the Contract with notice.

ART. 14 BREACH OF CONTRACT

14.1 If any payment is overdue or the Buyer commits any act of bankruptcy, or, if a limited company, satisfies any statutory ground for winding up by the court or voluntarily, then, without prejudice to any other remedies to which it may be entitled, the Seller may terminate all or any uncompleted contracts outstanding between it and the Buyer and its servants or agents may enter the Buyer's premises to recover all goods in respect of which property has passed.

14.2 In case of unilateral breach of contract by the Buyer and/or in case of annulment of the contract due to the Buyer's fault, the seller is entitled to compensation for all suffered losses, including loss of profit. If the goods have already been manufactured or if the production has already commenced, the Seller is always entitled to claim that those goods are accepted and paid for in cash by the Buyer.

ART. 15 AMENDMENTS OR INVALIDITY

15.1 Amendment or invalidity, either entirely or partially, of one or more clauses of these Conditions, does not result in the reneguing or invalidity of the other clauses.

15.2 Amendment or invalidity of part of a clause does not result in the reneguing or invalidity of the non-amended or non-invalid part of the clause.

ART. 16 RESOLUTION OF DISPUTES

16.1 All disputes arising in connection with the present Contract shall be finally governed by the laws of Belgium at the exclusivity of the courts of Antwerp.