

Special Conditions for the Sale of Damaged and Distressed Goods

1. Scope of Application

(1) These Special Conditions shall apply to all legal relationships between the Seller and Bidders, Buyers and other third parties with respect to the public tender and sale of damaged goods of all types. They shall apply - as far as applicable - to our legal relationship with the Owner/Seller of the goods as well as with the Bidder and/or Buyer as well as the legal relationship between the latter and the Owner/Seller.

(2) The Special Conditions shall take precedence over our General Terms of Business as well as all business conditions of Bidders and/or Buyers. Only differing general terms of contract included in offers/tenders published by us shall have precedence.

(3) We shall undertake activities with respect to goods in relation to Bidders, Buyers and other third parties "in the name and for the account of the party concerned", unless in the notice of tender a Principal/Seller is specifically identified by name as such.

2. Descriptions of Tendered Goods

(1) All descriptions are given to the best of our knowledge based on the information available in accordance with the descriptions of the Principal and the documentation of the goods present at the time of the notice of tender.

(2) The description of the goods in the notice of tender, offer of sale or supplementary information shall not under any circumstances constitute a warranty as to the quality of the goods.

(3) The Seller not accepts any liability for the correctness and completeness of the representation nor for the omission of notices of defects in or damage to the goods. Each interested party shall be responsible for informing themselves about the condition of the goods. This shall also apply in the event that the Seller may have previously inspected the goods in another capacity.

3. Inspection of the Goods by Interested Parties

The Seller agrees to offer, for as long as feasible, the opportunity to inspect the goods at the storage facilities during the normal working hours of the locality. Said inspections shall be made at the expense and risk of the interested party and against payment of costs incurred by the Seller and/or the storage facility. The Seller and his Principal shall not under any circumstances be liable for the consequences resulting from lack or insufficiency of inspection and/or failure to use examination opportunities.

4. Bids

(1) Bids can only be considered if received by us in writing (only mail or facsimile accepted) before the deadline specified in the notice of tender. Each Bidder shall be bound by their offer for two working days after the deadline for tender.

(2) It is expressly understood that the Seller is not under any obligation to accept any of the bids made.

(3) The Bidder/Buyer accepts by his offer to have acknowledged that the goods are damaged and possibly affected by faults, defects, or other deteriorations - also undetected damages - which might render the goods useless for the purpose intended and which even might lead to consequential losses. The Seller and his Principal are not liable for this. It is the sole obligation of the Buyer to comply with any regulations as to the provisions of public health office or other public legal regulations.

5. Contract of Sale, Payment of Purchase Price, Set-off

(1) The sales contract shall become effective by our acceptance of the bid on behalf of the seller. The Buyer shall be immediately notified.

(2) Payment of the amount invoiced shall be made within two (2) working days from the acceptance of tender and issuing of the invoice by means of an irrevocable bank transfer. Costs and fees charged for the bank transfer shall be borne solely by the Buyer.

(3) The calculation of the purchase price shall be based on the measurement and/or weight stated in the notice of tender. This measurement/weight shall be deemed to be accepted by the Buyer, unless a tolerance in measurement of more than 5% is determined by him in a suitable manner but for his account within three (3) working days and notice to such extent is given to the seller within another two (2) working days. The Seller must be given the opportunity to supervise the ascertainment of the actual measurement/weight. This shall also apply in case that an approximate measurement was stated in the notice of tender.

(4) The Buyer shall be solely responsible for arranging for any documentation necessary for the import, export or other transportation of the goods.

(5) In the event that the Buyer has not paid the purchase price within the aforementioned period, buyer shall be reminded of the payment with a two days period after which we on behalf of the Seller are free to dispose the goods at our sole discretion but at the expense of the Buyer. The Buyer shall remain obligated to compensate the Seller for any differences in proceeds and any costs which may arise as well as other detrimental effects of Buyer's failure to effect prompt payment.

(6) It is expressly agreed that the Buyer shall not have the right to set-off or retain amounts due and payable.

6. Delivery/Release of the Goods, Risk Assumption

(1) The goods are being delivered/released to the Buyer and accepted by him on an "as is" basis (i.e. in the condition as they are).

(2) Delivery/Release of the goods to be effected upon full settlement of the purchase invoice. The title to the goods shall pass only after complete payment of the purchase price.

(3) Upon conclusion of the purchase contract the Buyer bears the risk of any loss and deterioration to the goods as well as costs due in respect to the goods e.g. storage and insurance costs.

7. Warranty

(1) The goods shall be purchased and transferred on an "as is where is" basis (i.e. in the condition as they are) without warranty as to their grade, quality or condition. The Seller shall not under any circumstances be liable for any deterioration which may occur between the point in time when the Buyer has or could have inspected the goods and the delivery of the goods to the Buyer, unless said deterioration is the result of the gross negligence of a legal representative or executive employee of the Seller.

(2) In the event of an imperfection in the title to the goods, the liability of the Principal shall be limited to the exclusion of all other forms of compensation to the repayment in whole or in part of the purchase price. Any liability of ours is denied unless in cases of gross negligence by our management.

8. Liability for Damages

(1) The Seller shall not be liable for any damages caused by his primary agents, employees, people, or auxiliary persons, or other assistants due to negligence.

(2) The foregoing terms of contract shall not apply in cases of gross negligence of primary agents or managing employees, or in case of breach of a statutory duty of the contract or in case of claims for any physical injury.

(3) The liability for claims not foreseeable is expressly excluded unless in case of physical injury.

(4) The liability exclusions and restrictions set out in paragraph numbers (1) to (3) shall apply for all claims of the Buyer resp. the Bidder irrespective of the legal provision applicable as well as in favour of all primary agents, employees, people, auxiliary persons, and other assistants acting on behalf of the Seller.

(5) All above stipulations as set out in paragraph numbers (1) to (4) shall apply in our favour as well as in favour of our primary agents, employees, people, and auxiliary persons, and other assistants.

9. Packaging

The Buyer expressly waives the right to return the packing or a financial substitute solution of this right according to the Packing Decree of 12.06.1991 (VerpackV), as these costs are already forming part of purchase price without being shown separately. The Buyer solely is obliged to observe the legal provisions and decrees and he expressly declares to hold us harmless from any liability whatsoever.

10. Time Bar

All claims brought forward from the Buyer or the Bidder against the Seller or us are subject to a limitation period of one year.

11. Place of Performance, Venue and Applicable Law

(1) The place of performance for all obligations of the Buyer or the Bidder shall be the registered place of business of the Seller.

(2) The place of jurisdiction for all law suits from the Buyer or Bidder against the Seller is solely Cologne.

(3) The place of jurisdiction for law suits filed by the Seller or by us against the Buyer or Bidder is - at the discretion of the Seller/ours - either Cologne, the place of location of the goods at the time of disposal, or the places of business of the Seller or the Bidder.

(4) German law shall apply to all our activities within the scope of this agreement as well as for the sales contract with the Seller to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

12. Invalid Contract Stipulations

In the event that a provision, in whole or in part, should be held invalid, it shall not affect the validity of the remaining provisions. Invalid provisions or parts thereof shall be replaced by the applicable statutory provision