

Gomitex sa

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Gomitex sa - General Conditions of Sales and Delivery

1. Conclusion of contract

All sales and service contracts concluded by the seller are governed by the following conditions. The contract shall be deemed to have been concluded when the seller indicates his acceptance of the order by forwarding an order confirmation. Conditions stipulated by the purchaser in addition to or at variance with these General Conditions of Sale and Delivery shall only be valid if expressly accepted in writing by the seller.

2. Prices

The prices quoted are to be understood as net fixed prices, ex works, packed for road delivery, unless stipulated otherwise in the order confirmation. The prices quoted are binding only for the acknowledged order. The purchaser shall pay any duties, taxes, charges, etc. which are levied outside the seller's country in connection with the delivery, or shall reimburse the seller on presentation of appropriate evidence if the seller has been obliged to make such payments. Unless otherwise agreed and stipulated accordingly in the order confirmation, all bank and forwarding charges shall be paid by the purchaser.

3. Documents

Documentary material associated with a quotation, such as illustrations, drawings, details of weights and dimensions, are only binding if this has been confirmed expressly in writing. Cost estimates, drawings and other documentary material may neither be handed over to nor made accessible to third parties. The seller retains ownership and copyright of these documents.

4. Transfer of risk

Unless expressly stipulated otherwise in the order confirmation, the risk shall pass to the purchaser on dispatch of the delivery ex works, and insurance shall be ex work. The agreed delivery clauses shall be governed by the valid edition of the „Incoterms“ on the date on which the contract is concluded.

5. Delivery period

5.1 Delivery periods and delivery dates shall be deemed to be approximate, unless expressly stated otherwise in the order confirmation. The delivery period shall commence with the date of the order confirmation, but not before all technical details have been settled.

5.2 Furthermore, delivery periods and delivery dates indicated in the order confirmation shall be binding only if the purchaser punctually fulfils his obligations, in particular complying with the agreed terms of payment and providing evidence that all official permits have been obtained.

5.3 If delivery is delayed due to any of the circumstances

specified in Clause 10 or to action taken or neglected by the purchaser, the seller shall be granted an extension of the delivery period commensurate with the circumstances. If delivery is delayed for any reason whatsoever, the purchaser shall in principle have no claim to damages or termination of the contract.

6. Inspection and acceptance of products and services

6.1 The purchaser shall inspect the delivery of products and services immediately upon receipt, and notify the seller in writing within five days of the delivery of the nature, content and scope of any complaints. If purchaser fails to give notice, the delivery and services are deemed to be accepted. The purchaser shall immediately within the legal time limit notify the carrier and its insurance company in the event of any shipping damage. He must also inform the seller. Complaints concerning hidden defects must be notified to the seller by registered letter with return receipt within two working days after the discovery and at the latest six months after the delivery of the product. Products can only be returned if expressly agreed by the seller and transport will be made free of charge at the seller's premises.

6.2 Part deliveries may be made.

6.3 If the purchaser does not accept the delivery on the contractually agreed date, he must nevertheless make the payments due upon the delivery date. The seller shall then arrange for storage of the items delivered, at the expense and risk of the purchaser.

6.4 If the purchaser fails to fulfil his obligation to accept delivery for any reason, he shall be requested by the seller in writing to accept the delivery within a reasonable period of time. This can be dispensed with if the purchaser has cancelled the order or if it is otherwise apparent from his conduct that there would be no purpose in setting this time limit. The seller can then terminate the contract by simple written advice (without recourse to the courts) in respect of that portion of the delivery which has not been accepted, and claim compensation from the purchaser for the loss suffered as a result of non-performance. Subject to evidence of more extensive losses, the loss shall be deemed to be at least the amount which has been paid to date, but no less than 15% of the value of the order.

7. Payment

7.1 Unless otherwise agreed in writing, payments shall be made by the purchaser no later than the date of delivery, without any deductions, at the head office of the seller and in the latter's local currency.

7.2 Corresponding part payments shall be due in the case of part deliveries.

7.3 If the purchaser is in arrears with his payments, the

seller can suspend further implementation of the contract/ or ongoing delivery and recall parts already delivered. The interest rate for the outstanding payments shall be twice the legal interest rate.

8. Retention of title clause

8.1 The property of the goods will not pass to the purchaser until he has completely paid the goods and the payment price has been received by the seller.

9. Warranty

9.1 The seller undertakes, subject to the following provisions, to rectify any defect impairing the serviceability of the items delivered, if this is due to faulty design, materials or workmanship.

9.2 The warranty shall commence on the date on which the risk passes to the purchaser, and shall remain in force for six months.

9.3 Identical warranty terms, as applicable to the original items delivered, shall apply to the parts delivered in accordance with the warranty.

9.4 The seller's warranty obligations shall be deemed fulfilled with respect to the faulty part when he supplies a replacement. Any duties and charges shall be paid by the purchaser.

9.5 The warranty obligations of the seller shall not extend to defects attributable to materials supplied by the purchaser.

9.6 The warranty obligations shall apply only to defects arising under operating conditions envisaged by the contract and during proper use. They shall not apply to defects where the cause did not arise until after the transfer of risk. In particular, they shall not apply to defects due to poor maintenance, poor storage (temperature between 5 and 35° and relative humidity level between 30 and 60%) or bad installation by the purchaser, modifications made without the written consent of the seller, normal wear and tear.

9.7 The amount of the warranty is limited to the value of the defective product delivered or of the replacement of such product. In no event can the purchaser claim further compensation for losses of any kind which have not arisen on the items delivered themselves, in particular loss of production, loss of use, loss of orders, lost profits, and other direct and indirect losses. This exclusion of liability shall not apply to illegal intent or gross negligence on the part of the seller.

9.8 It is the purchaser's responsibility to make sure that all safety regulations are adhered to (protective glasses, etc.) and that the product is conforming to the standards applicable in the country of the purchaser.

10. Force majeure

10.1 The seller cannot be held liable for the non-execution of any of his obligations if any of the following circumstances prevents his production of the products or their delivery.

10.2 The following circumstances in particular are deemed as force majeure cases which free the seller of any liability: total or partial strike, whatever be the cause, lockout, machinery accidents, interruption or delay in transport, shortage of energy, shortage of basic products, act of god, fire, floods, epidemic and any other event causing a slowdown or stop of production within the seller's premises or with his suppliers or subcontractors provided such event is beyond the party's influence. In these cases no compensation for losses or indemnity can be claimed due to total or partial non-execution of the contract.

10.3 A party invoking one of the above circumstances shall immediately notify the other party when it occurs and when it ceases.

10.4 The consequences of these circumstances with respect to the time limits for fulfilling the obligations of both parties are stipulated in Clause 5. If any of these circumstances makes it impossible for one party to implement the contract, either party shall have the right to renounce the contract by simple written advice (without having recourse to the courts), provided the counterparty has previously been notified thereof.

10.5 The parties shall come to an amicable agreement on sharing the costs already incurred in respect of the implementation of the contract. Within the meaning of these provisions, costs are understood to mean reasonable actual expenses incurred. Each party shall ensure that its loss remains within narrow limits. If a delivery has already been made to the purchaser, the portion of the contract price corresponding to this delivery shall be deemed to be the seller's expenses hereunder.

11. Termination of the contract

Termination of the contract on whatever grounds shall not result in the loss of rights of the parties which have arisen during the life of the contract until the termination thereof.

12. Recourse in justice and applicable law

12.1 The court of the seller's country are only competent.

12.2 The Vienna Convention on Contracts for the International Sale of Goods shall not be applicable, unless otherwise agreed. The contract shall be subject to substantive law in the country where the seller's head office is located.



13. Data Protection

Unless agreed otherwise, personal data obtained in connection with the services as set out herein, shall be exclusively used for the performance of such services. For more information on our processing of personal data please see the Graf Privacy Statement on the Graf Website.

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