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## **ITC Terms of Delivery**

### I.

All offers as well as the relevant documents, materials, declarations and specifications representing an integral part thereof, such as illustrations and figures, drawings, declarations of weight and measurement specifications as well as technical descriptions of and instructions on the machine(s) and equipment are understood not to be binding on ITC. The agreement shall be subject to writing to its entire scope and extent. It shall only be brought about with ITC's signing the acknowledgement of the order and the customer affixing its signature there onto. Furthermore, any oral side agreements shall not be binding on ITC. This shall also apply to any change of the written form.

Any and all alterations made to the agreement at any later date shall only be binding upon ITC when confirmed by ITC in writing. The terms of delivery of the customer shall not be acknowledged by ITC.

### II.

#### **Scope of Delivery**

The scope of delivery as well as the technical features and properties of the machine(s) and equipment as specified in ITC's written order acknowledgement shall exclusively be binding, it being understood that the warranty of features and properties being binding upon ITC only, if and to the extent said features and properties are stipulated in the order acknowledgement and if they are described in the warranty as such. Any global references made to technical descriptions, duties record books or the like shall not represent a warranty of features and properties.

### III.

#### **Price, Payment**

Unless stated to the contrary, the prices agreed upon by ITC are understood to be ex works including loading at works, but excluding packing. The prices are understood plus value added tax at the legally applicable rate in each instance. In the absence of deviating agreements, payment shall be effected as follows:

1/3 upon receipt of the order acknowledgement;  
1/3 upon ITC's advising the customer that the item(s) is (are) ready for shipment;  
1/3 upon delivery of the machine(s) and equipment to the customer or - if agreed upon - upon acceptance.

### IV.

#### **Term of Delivery**

Where a term of delivery is agreed upon, said term shall commence at the date of ITC's receipt of a copy of the order acknowledgement duly countersigned by the customer, but not prior to the date of presentation of the documents, approvals and clearance certificates to be obtained by the customer and not before the date of ITC's receipt of the down payment agreed upon.

The term of delivery shall be deemed to be met with ITC having offered the delivery item(s) to the customer for acceptance by the expiry date of said term. Any deficiency claims filed by the customer or any acceptance made at a later date shall not be deemed to affect the term of delivery.

Any changes made at a later date with respect to the volume of delivery or the technical design(s) of the delivery item(s) shall be considered to change the term of delivery such that it commences anew as soon as ITC is in receipt of a copy of its written confirmation on any such alteration of the agreement, said copy being duly countersigned by the customer, it being understood that the foregoing shall not apply upon ITC's confirmation in writing that the change of the delivery item(s) shall be without any effect on the term of delivery.

The term of delivery shall, furthermore and for a reasonable period of time, be extended in the event of industrial actions, particularly in case of strike and lock-out, as well as in the event of any unforeseen incidents or occurrences made to prove the delay in manufacture or supply of the delivery item(s). This shall also apply if and to the extent ITC's sub-contractors are affected by any such event.

ITC shall, furthermore, not assume responsibility for any such aforementioned events if occurring during an already prevailing delay and ITC undertakes to inform the customer immediately of any such impediments.

If the customer suffers any damages due to a delay caused by the negligence of ITC, the customer shall, to the exclusion of further claims, be entitled to claim compensation for loss occasioned by delay, said compensation equaling 0.5 per cent per any full week of delay and maximum a total of 5 per cent of the value of the delivery item(s), it being understood that said compensation shall be appropriated to a penalty to be agreed upon between ITC and the customer in the event of ITC's exceeding the term of delivery, if at all.

If shipment is delayed at the request of the customer or for any reasons whatever at customer's responsibility, the customer shall be charged the provable costs incurred for storage of the item(s) or, where the item(s) is (are) stored at works of ITC's sub-contractor, at least 0.5 per cent of the amount invoiced for each month of storing of the delivery item(s) starting one month from the date of ITC's giving notice that the item(s) is (are) ready for shipment.

ITC, however, reserves the right to otherwise dispose of the delivery item(s) upon the fruitless lapse of a reasonable deadline set by ITC and to effect supplies to the customer within a reasonably extended term.

Prerequisite for ITC's meeting the term of delivery, in any event, is the customer's compliance with its contractual obligations.

V.

**Passing of Risk - Acceptance**

The risk shall pass to the customer the latest at the date of shipment of the delivery item(s) even in case of partial shipments or even if ITC agreed to render other services and to bear other costs such as, for example, shipping expenses or carriage or installation costs.

If so desired by the customer ITC, at the expense of the customer, shall insure the shipment against theft, breakage, transport, fire and water damages as well as against any other risks whatever that may be insured.

Where shipment is delayed for reasons lying within the scope of responsibility of the customer, the risk shall pass to the customer at the date of giving notice that the item(s) is (are) ready for shipment. ITC shall, however, be bound to take out insurance coverage, if so desired by the customer and at customer's expense.

The customer undertakes to promptly accept any and all delivered items. Without prejudice to its right according to Section VII of these Terms of Delivery the customer shall not have the right to refuse acceptance of the item(s) on the basis of immaterial defects. Partial shipments shall be allowed.

Inspection shall be effected only, if so agreed upon in ITC's written order acknowledgement. In this event the customer agrees to discuss, set and avail an inspection date immediately, said date to be not later than two weeks from ITC's declaring its willingness of inspection. Failure to do so shall result in the delivery being deemed to be accepted upon the expiry of the two weeks term. The inspection shall be recorded in writing. With the exception of hidden defects, any defects not specified in said report may not be claimed by customer at a later date.

ITC shall be entitled to account for any dead times which are arising from or in connection with the inspection or operation of the delivery item(s) and which are at the responsibility of the customer, said accounting being based on ITC's hourly service rates as applicable from time to time.

VI.

**Reservation of Title**

ITC reserves title to the delivery item(s) until the date of settlement of any and all accounts receivable resulting from the business relationship between the customer and ITC.

ITC shall be authorized to insure the delivery item(s) against fire, water and other damages at the expense of the customer, unless the customer furnishes proof of its taking out any such insurance coverage.

In the event of seizure or attachment or other third party orders the customer shall inform ITC thereof without delay. In the event of delayed payments and flowing a respective reminder the customer undertakes to return the delivery item(s) to ITC immediately. Any and all costs incurred in connection therewith shall be borne by the customer.

The claiming of the right of retention of title as well as seizure of the delivery item(s) exercised by ITC shall not represent a repudiation of contract.

VII.

**Liability for Material Defects**

To the exclusion of further claims and without prejudice to the rights as specified in Section IX of these Terms of Delivery ITC shall assume the following liabilities:

It shall be at the discretion of ITC to rework or to deliver again all those parts which, within a period of six months from the date of operation of any delivery item(s) and due to an occurrence prior to the date of passing of risk, prove to be unsuitable or essentially impaired in their usefulness - particularly because of imperfect construction, bad construction materials or unqualified workmanship. The customer undertakes to inform ITC in writing of any such defects and deficiencies immediately upon their detection. Any exchanged parts shall remain in the property of ITC.

In the event shipment, installation or operation is delayed for reasons beyond the control of ITC, ITC shall be deemed discharged of its liability the latest twelve months from the date of passing of risk.

The right of the customer to claim damages on the basis of defects, in any and all events, shall be subject to the statute of limitation within six months which period begins to run at the date of the timely filing of the notice of defects and expires not earlier than at the expiry date of the warranty term.

ITC shall not be liable for any damages resulting from or in connection with the following:

Improper or unqualified use, natural wear and tear, unqualified assembly or operation by the customer or any third party or parties, wrong or negligent treatment or unsuitable means of operation. ITC shall, furthermore, not assume liability for any and all damages resulting from the fact that the delivery item(s) is (are) accommodated in rooms or premises which are defective from a constructional point of view or wherein the delivery item(s) is (are) exposed to chemical, electrochemical or electrical influences or polluted air.

The customer shall allow ITC the necessary time and opportunity to effect any repairs ITC considers to be necessary and to effect shipment of the remaining lots; failure to comply with this provision even after the lapse of a reasonable extension granted to the customer shall result in ITC's being discharged of its liability to remedy defects.

It shall be only in cases of emergency where the industrial safety is endangered and for purposes of warding off unreasonably high damages or in cases where ITC is in delay with remedying any defects that the customer shall be authorized to correct any such defects itself or have them corrected by any third party and that the customer shall be entitled to request reimbursement of the necessary costs incurred from ITC.

If and to the extent any deficiency claim proves to be justified, ITC shall bear the cost of the replacement part including the shipment thereof as well as the reasonable disassembly and assembly costs. Where a defect is based on the fault of ITC, ITC shall, in addition to the foregoing, also bear the costs for fitters and technical help. Any and all other costs shall be borne by the customer.

The warranty term for replacement parts and repairs shall be three months, it being understood, however, that said term shall run at least until the expiry date of the original warranty term covering the respective delivery item(s). The warranty term applicable to the delivery item(s) shall be extended by that period of time operation is interrupted due to reworks.

Any and all further claims of the customer, particularly the claiming of such damages which are not caused to a delivery item, shall be excluded.

The aforementioned exemption from liability shall not apply in cases of intent or gross negligence caused by the bodies of ITC or its executives or in cases where liability is assumed in accordance with the product liability regulations relating to the defects of delivery item(s) for the injury of persons or property which injury results from the private use of any such item(s). The exemption from liability shall, furthermore, not apply in cases of item(s) lacking explicitly guaranteed features and properties, if and to the extent such guarantee was just aimed to protect the customer against any damages not caused to the delivery item(s) as such.

## **VIII.**

### **Liability for Ancillary Obligations**

In the event the customer shall not be able to make use of the delivered item(s) as provided for in the agreement due to the fault of ITC with said fault resulting from the negligent or wrongful realization of suggestions made and discussions held prior to or after the conclusion of the agreement and if such fault is based on the non-compliance with any other ancillary obligations - in particular instructions for the servicing and maintenance of the delivery item(s) - the provisions of Sections VII and IX relating to customer's assertion of claims shall apply mutatis mutandis, it being understood that the claiming of any additional or further damages shall be excluded.

## **IX.**

### **Orderer's Right of Rescission**

The customer shall have the right to rescind the agreement, if and to the extent ITC proves to be unable to effect shipment of the entire supply prior to the passing of risk. The customer shall, furthermore, have the right to rescind the agreement if it proves that when ordering identical effected and if it is in the legitimate interest of the customer to refuse the acceptance of a partial lot. Said right of rescission, however, shall not apply if ITC, instead of a specific item delivery of which became impossible for ITC, offers shipment of a technically equivalent item.

In the event ITC falls into delay of performance within the interpretation of Section IV of these Terms of Delivery and if the customer grants a reasonable period of grace by explicitly stating that it shall refuse acceptance of the performance upon the lapse of said period of grace, the customer shall have the right to rescind, if said period of grace is not met.

If the fact of non-performance becomes obvious during the delay of acceptance or due the negligence of the customer, the customer undertakes to give consideration therefore.

The customer shall, furthermore, have a right of rescission, if ITC fruitlessly fails to meet a period of grace granted for repairs or shipment of a replacement to remedy a significant damage at ITC's responsibility.

Any and all further claims of the customer, particularly with respect to the depreciation of the purchase price as well as with respect to any recovery of damages whatsoever including any such damages not directly caused to the delivery item(s) shall be excluded.

Said exemption from liability shall not apply in the event of intent or gross negligence caused by ITC's bodies or executives or in cases where liability is assumed in accordance with the product liability regulations relating to the defects of delivery item(s) for the injury of persons or property which injury results from the private use of any such item(s). The exemption from liability shall, furthermore, not apply in cases of item(s) lacking explicitly guaranteed features and properties, if and to the extent such guarantee was just aimed to protect the customer against any damages not caused to the delivery item(s) as such.

## **X.**

### **Place of Venue**

If the customer is a general merchant a public law entity or an entity based on special assets of the government any actions filed due to disputes arising from and in connection with the contractual relationship shall be filed with the competent court having jurisdiction at ITC's principal place of business or with the court having jurisdiction at the place of business of the branch office effecting the shipment. ITC shall also have the right to sue the customer at its principal place of business. caused to the delivery item(s) as such.

## **XI.**

### **Data Protection**

Our company considers proper processing of Personal Data to be highly important.

The legally privacy policy can be found at "<https://www.itc-intercircuit.de/en/home/>". The arrangements between the Parties relating to the processing of Personal Data are laid down in the Data Protection Agreement and can be found at "<https://www.itc-intercircuit.de/en/privacy/>".