

BDS Terms and Conditions Guide

Clause Number: H516
Effective: 01/16/2018
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Liquidated Damages for Late Delivery (Variable)

a. In the event that Seller fails to adhere to the shipment or delivery schedules specified in this Contract (“Late Delivery of Goods”), and upon election by Buyer in its sole discretion, Seller shall pay to Buyer, in lieu of actual damages for such late delivery, the amounts specified herein as Liquidated Damages (“LDs”). The Parties acknowledge that the LDs are a good faith estimate of reasonable compensation for the damages resulting from Late Delivery of Goods and that such LDs are not intended, and shall not be construed, as a penalty. Seller further acknowledges that (i) LDs payable by Seller herein are reasonable when viewed against the potential harm to Buyer caused by Late Delivery of Goods under the Contract, (ii) payment of LDs shall not excuse Seller from any obligation arising under this Contract, including to deliver Goods in accordance with shipment or delivery schedules, and (iii) payment of LDs shall not prejudice any other rights and remedies available to Buyer under this Contract or in equity.

b. LDs shall accrue at the following rates during the periods specified below. Periods are cumulative, and Seller shall be responsible for payment of all accrued LDs until the date of delivery of the subject late Goods. Buyer may collect LDs from Seller in the form of setoff against future Contract payments or as otherwise provided for in this Contract.

Period	Late Delivery of Goods in calendar days after Contract delivery date	Percentage of the Contract line item price of the late Goods payable to Buyer for <u>each</u> calendar day after the Contract delivery date

c. Notwithstanding the foregoing, during any period of Late Delivery of Goods, Buyer may, at its sole discretion, cancel this Contract for Default and recover actual damages reasonably incurred by Buyer that result from Seller’s Late Delivery of Goods, however Buyer shall credit any LDs collected hereunder against any such actual damages recovered.