

Standard Business Terms of Eberle GmbH & Co. KG

1. Scope of Contract

- 1.1 These standard business conditions only apply to companies as defined according to § 14 BGB
- 1.2 All of our deliveries and services are exclusively conducted on the basis of these standard business conditions. We refuse to accept contradictory or diverting conditions on part of the customer, unless we have explicitly recognized their validity.
- 1.3 Our standard business conditions also apply to future transactions, even if we occasionally do not refer to them.

2. Quotation and Conclusion of Contract

- 2.1 Our quotations are subject to change without notice and non-binding, unless expressly designated to be binding.
- 2.2 Decisive for the order is our written confirmation of order. Should the customer have any objections to the contents of the confirmation of order, an immediate protest must be lodged. Otherwise the contract will be concluded in accordance with the confirmation of order.
- 2.3 When the order is executed immediately without delay, the invoice respectively the delivery note serve as confirmation of order.
- 2.4 Samples, illustrations, weights, dimensions and colour specifications are only approximate, provided binding indications have not been explicitly agreed upon.

3. Prices

The prices mentioned in the confirmation of order are decisive. They do not include the legal Value Added Tax. From a value of goods of 300.-- Euro the delivery is free, packing included. For deliveries below a value of goods of 300.-- Euro we charge a flat rate of 5.-- Euro for packing, carriage, etc. For deliveries abroad, the shipment will be sent ex works.

4. Payment

Bills of exchange and cheques will only be accepted as means of payment upon explicit agreement. Discount expenses and any other costs are to be borne by the customer.

5. Compensation and Retention

The customer may only demand compensation for an undisputed or legally assessed counter demand. The assertion of a right of retention is only permitted to the customer, if it is based on the same contractual relationship.

6. Delivery

- 6.1 The delivery deadlines stipulated by us are non-binding, unless a binding agreement was entered. The delivery period starts with the confirmation of order, however, not until the customer has supplied necessary documents and information on technical details, permits, releases and possibly agreed down payments.
- 6.2 We will not be held responsible for delays in delivery and in service due to force majeure or due to unforeseeable events or events through no fault of our own that make the fulfilment of the delivery or of the service distinctly more difficult or even impossible, even if binding periods of time and deadlines have been agreed upon. Such events entitle us to extend the time for the delivery or the service by the duration of the impediment not including an adequate period of preparation. Should the impediment last longer than three months, the customer is entitled after having granted an appropriate additional respite to withdraw from the contract. Claims for damage by the customer are in this case not permitted.
- 6.3 Should our delivery be delayed due to gross negligence on our part, we can be held liable for the damage caused by the delay. In case of slight negligence on our part, our liability for proven damage caused by the delay is limited to a compensation for every completed week of the delay of 0.5% each, in total, however, no more than 5% at the maximum of the price for that part of the shipment that could not be used purposefully due to the delay.

7. Passing of Risk / Shipment

- 7.1 The customer is to bear the costs and the risks for the shipment and transportation of the goods. The risk is passed on to the customer as soon as the goods have left our works. This also applies, if delivery carriage free has exceptionally been agreed.
- 7.2 If the shipment is delayed due to circumstances for which the customer is responsible, the risk is to be borne by the customer from the day the goods are ready for shipment.
- 7.3 Should we choose the shipping method, the route or the shipping agent, we will only be held liable for a gross negligence regarding the respective choice.

7A Sterile packed goods

A return of sterile packed goods is excluded.

8. Complaint

- 8.1 Upon acceptance or receipt of goods the customer undertakes to inspect each delivery for completeness and damage to the packaging. Any defects must be notified to us in writing immediately. The customer must see to it that the carrier records the damage/missing items.
- 8.2 The customer is obliged to immediately examine the goods and to immediately place written claims for obvious faults. Hidden faults must be claimed in writing immediately upon their discovery. Otherwise the shipment is regarded as approved.
- 8.3 In the event of a defect for which we are responsible we shall, at our discretion, be entitled to carry out subsequent performance by either remedying the defect or by delivering a replacement free of defect. If we refuse subsequent performance, if it has failed or cannot be expected of the customer, the customer may assert the further rights laid down by law. No liability will be accepted for ordinary wear and tear and for improper or negligent use of goods.

9. Warranty Claims

- 9.1 In the event of intent and gross negligence we shall be liable for damages, irrespective of the legal reason upon which these are based. In the event of slight negligence (*einfache Fahrlässigkeit*) we shall only be liable in the following cases:
 - for damages resulting from the injury to life, limb or health of a person,
 - for damages resulting from the breach of fundamental contractual obligations which go to the root of the contract (contractual obligations, the performance of which are essential for the proper execution of the contract and the observance of which the customer regularly re-lies and may rely upon); in such case, however, our liability shall be limited to the compensation of the foreseeable damage that typically occurs.
- 9.2 The present limitations of liability shall not apply if we have fraudulently concealed a defect, have furnished an express guarantee as well as for liability under the German Product Liability Act.
- 9.3 The legal provisions on burden of proof shall be unaffected by the aforesaid provisions

10. Statute of Limitations

- 10.1 Unless otherwise provided in the following, the general period of limitation for claims of the customer due to material or legal defects shall be one year from delivery. Such limitation period shall also apply to the contractual and extra-contractual claims for damages of the customer which are based on a defect in the goods.
- 10.2 The statutory periods of limitation shall apply
- for damage claims resulting from the injury to life, limb or health;
 - for liability under the German Product Liability Act;
 - if we have fraudulently concealed a defect;
 - if we have furnished a guarantee;
 - if the item delivered by us is a building or an object that, in conformity with its customary manner of utilization, has been used for a building and has caused its defectiveness;
 - for recourse claims against the supplier in the event of end delivery to a consumer (sec. 479 German Civil Code).

11. Reservation of Proprietary Rights

- 11.1 We reserve title of all goods delivered by us until full settlement of all our receivables from previous contracts. Cheques and bills receivable as well as claims from outstanding accounts shall also be part of these receivables. Where liability for us arises from bills of exchange in connection with payment, the reservation of title will not expire before our liability on the basis of the bill of exchange has been excluded.
- 11.2 If the customer defaults in payment or if it becomes obvious that our claims for payment are jeopardized because of the customer's inability to pay we are entitled, due to the reservation of title, to demand surrender of the goods.
- 11.3 In the event of attachment of the item or interventions by third parties, the customer shall immediately notify us. The customer shall bear all costs that may be incurred for cancellation of the attachment of the goods or for replacement of the delivery item, insofar as these costs cannot be recovered by the third party.
- 11.4 Subject to admissible revocation for good cause, the customer shall be entitled to dispose of the delivered goods within the framework of his ordinary course of business. Especially assignment as collateral and pledge are not permissible. The goods under reservation of title may only be passed on by the customer to the acquirer, as long as the customer is not in arrears with his payments towards us.
- In the event of the goods being resold the customer hereby already assigns to us all claims from the resale, in particular claims for payment, but also all other claims in connection with the sale, to the value of the amount payable on the invoice (including value added tax).
- Unless countermanded by us for an admissible and compelling reason, the customer is entitled to collect the claims assigned to us in a fiduciary capacity. The sale of accounts receivable under the terms of actual factoring requires our prior consent. We are entitled for good cause to inform third-party debtors of an assignment of claims, also in the name of the customer. The customer's right of collection ceases with the notification of the assignment to third party debtors. In the event of revocation of the collection right, we shall be entitled to request the customer to disclose the assigned claims and debts to us, to provide all information which is necessary for collection, to hand over the related documents and to advise the debtors of the assignment.
- Important reasons within the meaning of these provisions are: payment default, suspension of payments, the opening of insolvency proceedings, the protest of a bill of exchange, or clear evidence of excessive indebtedness or impending insolvency on the customer's part.
- 11.5 Treatment and processing by the customer of the goods delivered is always done on our behalf. We are considered as manufacturers without further obligations within the meaning of section 950 of the Civil Code. If the item delivered is processed with other materials that do not belong to us, we thereby acquire the joint ownership of the new item, the proportion being the invoice value to the purchase price of the other goods processed. Moreover, the same provisions apply to the item resulting from the processing as to the goods delivered.
- 11.6 If the delivery item is combined, mixed or blended with other movable products of the customer in such a way that the product of the customer is to be considered as the main thing, as early as with the present the customer shall assign to us co-ownership of the overall product in proportion to the value of the delivery item and the value of the other combined, mixed or blended products. The customer shall keep the property in safe storage for us free of charge. If the delivery item is combined, mixed or blended with movable products belonging to a third party in such a way that the product of the third party is to be considered as the main thing, as early as with the present the customer shall assign to us his claim for remuneration against such third party, i.e. the amount proportionate to the invoice final amount of the delivery item.
- The new product created by combining, mixing or blending and/or the (co-)ownership rights to the new product to which we are entitled and/or which are to be assigned to us as well as the payment claims assigned to us shall serve as security for our claims in the same way as the delivery item itself.
- 11.7 If or to the extent that a retention of title or an assignment of claims is ineffective or unenforceable due to mandatory provisions of foreign law, the security corresponding to retention of title or assignment of claims applicable in this area shall be deemed as agreed. If, according to this, the assistance of the customer is required, he must take all steps necessary in order to establish and maintain the security.
- 11.8 Upon request of the customer we will, at our option, release securities, if the realisable value of the securities exceeds the value of our claims by more than 10%.

12. Acceptance

- 12.1 Provided we manufacture goods according to the customer's specifications, an acceptance must take place. The person accepting the goods in the name of the customer is entitled to make the for the acceptance necessary binding statements on behalf of the customer.
- 12.2 If a customer does not observe the date agreed on for the acceptance or if he refuses to attend a common acceptance date or to even agree on a common acceptance date, the goods are considered accepted 12 working days after notification of the readiness for shipment.
- 12.3 The acceptance can only be refused by the customer due to substantial faults and until these have been eliminated. Should faults be noticed during the acceptance, they will be recorded in a list of defects. Other defects can only be asserted within the guarantee period, if it was not possible to detect them during the acceptance.

13. Place of Performance, Jurisdiction, Applicable Law

- 13.1 The place of performance for delivery and payment for both parties is only Wurmberg.
- 13.2 The jurisdiction for all litigation resulting from the contractual relationship as well as from its formation and its effect is for businessmen of both parties the court within the jurisdiction of which our company comes. However, it is also possible for us to file a suit at the customer's headquarters.
- 13.3 The contractual relationship is subject to the German Law only. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 13.4 In the event of inconsistencies between the German and the English version of this Standard Business Terms, the German version shall prevail.