

General Terms and Conditions for Sale and Delivery Euscher GmbH & Co.KG

I. Scope of application

1. We shall deliver and produce exclusively on the basis of the following General Terms and Conditions for Sale and Delivery in their version valid at the time the order is placed. The present General Terms and Conditions for Sale and Delivery shall apply to any – also to future – agreements on deliveries and any other performances including contracts for work and work performance contracts executed for the industry, trade, business, associations, communal and similar institutions, but not for private individuals. This shall apply also in case the customer notified us of his own differing general terms and conditions. The customer's terms and conditions shall not be recognized even in case we do not expressly contradict them again after their receipt.
2. Oral arrangements shall be binding upon us only if and to the extent they have been confirmed by us in writing.

II. Offers and the conclusion of agreements

1. Our quotations shall be subject to confirmation. Any oral agreements and undertakings of our employees shall be binding only when confirmed by us in writing. Any order of the customer shall be binding.
2. The information, drawings, illustrations, technical data, indications of weight and measures and the performance descriptions contained in the brochures, catalogues, circulars, advertisements, price lists and any other documents pertaining to an offer shall always be non-binding and shall not result in an agreement on the quality of our products, unless they have been expressly qualified as binding in the order confirmation.
3. Especially our declarations relating to our quotations (e.g. descriptions of performances, reference to DIN standards etc.) shall, in the case of doubt, not be considered as an acceptance of guarantee. Any acceptance of a guarantee shall require our express written declaration.
4. We shall not assume any procurement risks. We shall be entitled to withdraw from the agreement in case we do not receive the item to be delivered or the unfinished materials despite of having previously concluded the corresponding purchase agreement; according to section IX., our liability for intention and negligence shall be unaffected. We shall inform the customer immediately if the item to be delivered or the unfinished materials will not be available in time, and, in case he wishes to withdraw, we shall immediately exercise the right to withdraw; in the event of a withdrawal, we shall immediately reimburse to the customer any counter-performances already provided.
5. The customer shall accept the delivery. If the acceptance of a delivery is seriously and definitely denied, we shall be entitled to withdraw from the agreement by a written statement and claim damages on account of non-fulfilment.

6. Force majeure, labour disputes, riots, governmental measures and any other unforeseeable, unavoidable and serious events shall exempt us, for the duration of the disturbance and to the extent of their impact, from our obligations to perform. This shall apply as well in case any possible event occurs at a moment in which our performance is already delayed, unless we caused the delay intentionally or grossly negligently. In such a case we shall provide the customer immediately and to a reasonable extent with the required information. In such a case, the customer shall adapt in good faith our obligations to perform resulting from the contractual relationship to the changed circumstances. In case the impediment lasts for more than 3 months, each contracting party shall be entitled to withdraw from the agreement as far as that part of the agreement is concerned that has not been fulfilled yet.

III. Prices

1. Unless otherwise agreed upon, our prices are to be understood ex works net cash, unloaded, plus turnover tax, or ex works plus freight and turnover tax.
2. Unless otherwise agreed upon, the prices and conditions of the price list that is valid at the moment of the conclusion of the agreement shall apply.
3. In case any charges or any other costs of outside services (wage and salary increases, prices of material raw materials etc.) which are included in the price agreed upon are changing more than six weeks after the conclusion of the agreement, or in case they arise for the first time during this period, we shall be entitled to change our prices accordingly.

IV. Execution of the deliveries, delivery times and dates

1. Our duty to deliver shall depend on the condition that we are timely and correctly supplied, unless we are responsible for the incorrect or delayed delivery or the non-delivery.
2. Delivery dates that are binding shall be expressly agreed upon as such. The time limit agreed upon for the delivery (delivery time) shall start only with the receipt of our order confirmation by the customer, however, not before the submission of the information, technical data and documents to be provided by the customer and not before the receipt of a down-payment agreed upon.
3. Any modifications or extensions of the agreed initial order volume intervening after the conclusion of the agreement shall reasonably extend or postpone the initial delivery times and dates.
4. We shall reserve the right to exceed or to undercut the number of items mentioned in the order by up to 10 %. In case the number of items is undercut, no additional delivery shall be carried out.
5. The time of the shipping of the consignment ex works or warehouse shall be decisive for the complying with the delivery times. They shall be considered as complied with upon the communication of their readiness for shipment, even if the goods cannot be sent on time without our fault.

6. If the delivery is delayed, the customer shall fix to us a reasonable additional period and shall be entitled, following its expiration without any result, to withdraw from the agreement to the extent the agreement has not been fulfilled yet. Any possible claims for damages shall be subject to section IX. of the present provisions.

V. Payment/Offsetting/Right of retention

1. Any time limits for payments shall start to run on the invoice date. Any payments intended for the settlement of our debt claims shall be executed in cash according to the terms of payment granted by us. Unless otherwise agreed upon or stipulated on the invoice form, the payment shall be effected within 10 days with a cash discount of 2 % or within 30 days after the date of issue of the invoice without any deduction. In the case of a bank transfer to a bank account indicated by us or in case the payment is effected by check, the payment shall be considered as effected as soon as our account is credited without reservation with the respective amount.
2. Orders to pay, checks and bills of exchange shall be accepted only following a special written agreement and only on account of performance by charging any collection, discount and bank charges to the customer.
3. In case we are issuing a bill of exchange and handing it over to the customer or, at his request, to a third party, in particular in connection with the so-called kite flying, only the encashment of the bill of exchange by the drawee shall be considered as payment, in particular in the sense of the provisions of section VI. of the present terms and conditions (reservation of ownership), even if we received the purchase price already before by a cash payment, check, bank transfer or in other anyway.
4. We shall not be responsible for the timely and due presenting, protesting or collecting of bills of exchange and checks.
5. In case the customer's payment is fully or partially delayed, we shall be entitled, in the frame of business dealings, to ask for interests amounting to the respectively valid debtor interest of the commercial banks as of the respective point of time, at least, however, of 9 percentage points above the respective basic interest pursuant to § 247 BGB (German Civil Code) plus flat-rate handling charges amounting to € 25,-- plus turnover tax in its legal amount, unless the customer gives evidence of the fact that the damage occurred is of less importance. We shall reserve the right to assert any other damage.
6. In case the customer's payment is delayed for more than 3 weeks or if he does not cash a check or a bill of exchange upon its maturity or if for any other reason doubts arise as to his ability to pay, any of the amounts the customer is obligated to pay to us shall immediately become due, irrespective of the time to maturity of any possibly discounted bills of exchange. Moreover, we shall be entitled to ask for the furnishing of securities on account of any other debt claims, to execute the deliveries still outstanding only against payment in advance or securities, to prohibit the treatment, processing and/or resale of the goods of which we are the owners or co-owners and to ask for their return.

7. Any offsetting of the customer shall be excluded unless the counter-claims have been validly determined or have been expressly recognized by us in writing.
8. Any payments (including partial payments and payments on account) shall always be used for the settlement of the respectively oldest liability item, the respectively accrued interests and the flat-rate handling charges.
9. If there are any possible defects, the customer shall not be entitled to the right of retention, unless this is in a reasonable relation to the defects and the probable costs of additional fulfilment (in particular the elimination of the defects). Moreover, the customer shall be entitled to exercise the right of retention only to the extent his counter-claim is based on the same contractual relationship.

VI. Reservation of ownership

1. Any delivered goods shall remain our property (conditional commodities) until any debt claims, in particular also the respective balance claim to which we are entitled in the frame of the business relationship have been fully settled. This shall apply as well to any debt claims arising in the future and to any contingent debt claims, e.g. resulting from acceptor's bills, and also in case payments are made for specially designated debt claims, and also to the debt claims that have been unilaterally established by the insolvency practitioner by the selection of fulfilment.
2. Any goods supplied by us shall remain our property until any – even future – debt claims to which we are entitled towards the customer as a result of the business relationship have been settled in full. In case the goods supplied are treated or processed, this shall be done only on our behalf and we shall be the owner of the new items possibly resulting from the treatment or the processing. The customer shall not acquire any claims towards us on account of the treatment or processing. To any contingent rights the customer possibly acquired with regard to the goods supplied with the reservation of ownership, however, the following shall apply by way of exception: As to the treated or processed goods, he shall receive a contingent right of the acquisition of ownership the value of which has to be determined according to the part of the contractually agreed purchase price that has already been paid. In case our goods are connected to or mixed up with goods belonging to a third party as a consequence of the treatment or the processing or in any other way, we shall acquire the co-ownership of the result of this process according to §§ 947, 948 BGB.
3. The customer shall be entitled to resale the goods delivered by us only following their processing and under the reservation of ownership until the purchase price is settled in full and only in the ordinary course of business. The customer shall be entitled to resale the goods without being processed only in case this has been expressly agreed upon in writing.

4. The customer's debt claims arising out of the resale of the conditional commodities shall be assigned to us right now together with any securities the customer obtains for the assigned debt claims. They shall serve as securities to the same extent as the conditional commodities. If the conditional commodities are sold by the customer together with any other goods that have not been sold by us, the debt claims arising out of the resale shall be assigned to us in the relation of the invoice value of the conditional commodities to the invoice value of the other goods. Upon the sale of goods of which we are co-owners according to para. 2, the part corresponding to our co-ownership shall be assigned to us. In case goods belonging to us are processed in the frame of a contract for work, the claim for the compensation for work amounting to the price invoiced by us for the processed goods shall hereby be assigned to us.
5. The customer shall be entitled to collect debt claims resulting from the resale in his own name. He shall pay over to us the collected amounts corresponding to the invoice value of the conditional commodities. This authorization to collect shall lapse upon our revocation, at the latest, however, in the event of a delay in payment, if a check or bill of exchange are not cashed or when a petition for the opening of bankruptcy proceedings is filed. We shall make use of our right to revoke only in case we get aware of circumstances resulting in an essential deterioration of the customer's financial situation endangering our right to getting paid. Upon our request, the customer shall immediately inform his purchasers about the assignment made in our favour and provide us with the information and documents required for the collection. In no case the customer shall be entitled to assign the debt claims to another person. This shall apply as well to any factoring transactions, to which the customer shall not be entitled either on account of our authorization to collect.
6. The customer shall notify us immediately of any pledging and any other third-party interferences. The customer shall bear any costs required for the annulment of the access and for the replacement of the purchased items, unless they can be collected from a third party.
7. If the value of the existing securities is exceeding the secured debt claims including the secondary claims (interests, costs and similar) in the aggregate by more than 20 %, we shall, upon the customer's request, release securities chosen by us until the exceeding does not amount to more than 20 %.
8. In case the customer's payment is delayed or if he does not cash a check or a bill of exchange upon maturity, we shall be entitled to take back the conditional commodities and to enter for this purpose, if applicable, the premises or the warehouse of the customer. The taking back of the goods shall not be considered as a withdrawal from the agreement.
9. We shall be entitled to withdraw from the sales agreement or from parts of the sales agreement by a written declaration, if the customer gets insolvent, if the customer has excessive debts, if the customer ceases his payments or if the customer has filed a petition for insolvency proceedings. The right to withdraw shall be exercised prior to the opening of the insolvency proceedings. The customer shall notify us immediately of the occurrence of his inability to pay, his excessive debts or the cessation of his payments. If the customer fails to notify us, he shall pay to us a flat-rate amount of 5% of the value of the goods. In addition, we shall be entitled to prohibit the resale, the processing and the taking away of the conditional commodities. The prescriptions of the Insolvency regulations shall remain unaffected.

VII. Shipment, transfer of risk, packaging, partial delivery, continuous delivery

1. Unless otherwise agreed upon, the goods shall be delivered in packed condition. The packaging will be taken back at our warehouse; however, we shall not assume the customer's costs of the back-transport to the warehouse, nor those of his disposing of the packaging.
2. Any goods the readiness for shipment of which has been notified according to the agreement shall be immediately called off, otherwise, we shall be entitled, following a reminder and at our discretion, to send them at the customer's expenses and risk or to store them and to invoice them immediately.
3. We shall determine the shipment route and the means of transport as well as the forwarder and the carrier. Upon the handing-over of the goods to the forwarder or the carrier, at the latest, however, upon their leaving the warehouse or the delivering plant, the risk, also the risk of an arrest of the goods, shall be transferred to the customer in any business transactions, even in case of a franco or free house delivery. We shall take out insurances only upon the customer's request and expenses. The duty to unload the goods and to bear the respective charges shall be incumbent on the customer.
4. If the transport on the planned route or to the planned place of destination is impossible at the planned time without our fault, we shall be entitled to deliver the goods on another route or to another place; the incurred additional costs shall be borne by the customer. The customer shall be consulted beforehand.
5. We shall be entitled to execute partial deliveries to a reasonable extent.
6. In the case of agreements with continuous deliveries the customer shall ask us for calls with partial quantities, each of them of approximately the same volume; otherwise we shall be entitled to determine them according to our reasonable discretion. In case the individual calls are exceeding the contractual quantity, we shall be entitled but not committed to deliver the exceeding quantity. We shall be entitled to invoice the exceeding quantity at the prices valid upon the calling off or the delivery.

VIII. Warranty

We shall be liable for deviations of the goods supplied by us from their agreed or usual quality exclusively according to the provisions of the present General Standard Terms and Conditions and, in particular, in accordance with the following prescriptions:

1. Any defects of the goods shall be notified immediately in writing, at the latest 14 days after their delivery. Any defects that cannot be discovered within this period despite of an extremely careful examination shall be notified in writing immediately after their discovery – by immediately stopping any possible treatment or processing.
2. After the execution of the agreed acceptance of the goods by the customer, the latter shall no longer be entitled to lodge a complaint with regard to the defects that could be discovered upon the agreed kind of acceptance.
3. In case the deviation from a possibly agreed quality is unimportant and in case the impairment of the usefulness is only insignificant, the customer shall not be entitled to any claims on account of defects.

4. In the event of a justified notice of defects communicated in time we shall be entitled, exclusively at our discretion, to take back the rejected goods and to replace them by goods that are free from defects or to rework them. If the customer prefers to claim damages instead of the performance or take himself remedial action or withdraw from the agreement, the rework shall be considered as failed only following a second intent without any result. The legal cases in which no time limits have to be fixed shall remain unaffected. The liability for consequential damages due to defects shall be globally excluded.
5. The customer shall immediately enable us to satisfy ourselves as to the defect, and, in particular, shall make the rejected goods wholly or partially available to us upon our request.
6. We shall warrant reworked goods and substitute deliveries in the same way as the initial delivery or performance.
7. The warranty period shall be of 12 months. The warranty period shall start to run with the delivery date. This limitation period and the beginning of the time limit shall apply also to infringement of the duties beyond material defects and legal infirmities. The limitation period shall not be suspended by any discussions that were initiated upon the customer's request.

IX. General limitations of liability and prescriptions

1. We shall be liable in cases of intention and gross negligence on our part or on part of a representative or a person employed in the performing of obligations according to the legal provisions. As to the rest, we shall be liable only pursuant to the Product liability law on account of injuries to life, to the body and to health, on account of the culpable infringement of material contractual obligations or to the extent we concealed a defect fraudulently or accepted a guarantee as to the quality of the delivered item. The claim for damages on account of the infringement of material contractual obligations, however, shall be limited to damages that are typical for the agreement and foreseeable. The liability for any damage caused by the delivered item to objects of legal protection of the customer, e.g. damage to other items, shall be completely excluded. The provisions of the sentences 3 and 4 of the present para. 1 shall not apply in the event of intention or gross negligence or if we are liable on account of injuries to life, to the body and to health or if we concealed a defect fraudulently or accepted a guarantee as to the quality of the delivered item.
2. The provisions of the preceding para. 1 shall include compensation for damages in addition to performance and compensation for damages instead of the performance, irrespective of the legal argument, in particular on account of defects, the infringement of duties resulting from the obligatory relation or unlawful acts. This shall apply as well to the claim for the compensation of useless expenses. The liability on account of delay shall be subject to the following paragraph 3, the liability on account of impossibility shall be subject to paragraph 4 of the present section.

3. We shall be liable if the performance is delayed due to intention or gross negligence on our part or on part of a representative or a person employed in the performing of obligations according to the legal provisions. In any other event of a delay of performance our liability for compensation for damages shall be limited to 5% of the value of the part of the delivery concerned by the delay in addition to and instead of the performance. Any further claims of the customer shall be excluded, also after the expiration of a time limit for performance possibly fixed to us. The preceding limitation shall not apply to liability on account of injuries to life, to the body or to health.
4. To the extent the delivery is impossible, the customer shall be entitled to claim damages according to the legal provisions. However, the customer's right to claim damages in addition to or instead of performance and the reimbursement of useless expenses shall be limited to 10% of the value of that part of the delivery that cannot be used due to the impossibility. Any further claims of the customer on account of the impossibility of the delivery shall be excluded. This limitation shall not apply to cases in which we are liable on account of intention or gross negligence or on account of injuries to life, to the body or to health. The customer's right to withdraw from the agreement shall be unaffected.
5. The limitation period applying to claims for damages shall be of 12 months from the delivery date, irrespective of the legal argument.
6. The limitation period pursuant to para. 5 shall also apply to any other claims for damages towards us, irrespective of their legal argument. They shall apply also to the extent the claims are not related to a defect.
7. The preceding limitation periods shall apply in accordance with the following provisions:
 - a) In general, the limitation period shall not apply in the event of intention.
 - b) As to the rest, the limitation period pursuant to para. 5 shall not apply either in case we are fraudulently concealing the defect or if we accepted the guarantee for the quality of the delivered item. In case we fraudulently concealed a defect, the legally applicable time limits with the exclusion of an extension of the period in the event of fraudulence according to § 438 para. 3 BGB shall apply instead of the time limit mentioned in para. 5.
 - c) In addition, the limitation period pursuant to para. 5 shall not apply either to claims for damages in the event of an injury to life, to the body or to health or freedom, in the event of claims arising out of the Product liability law, in the event of a grossly negligent infringement of a duty and in the event of a culpable infringement of material contractual duties.
8. The limitation period shall start to run with the delivery at the place of destination for any claims for damages.
9. To the extent claims for damages are mentioned in the present section, they shall cover as well claims for the compensation of useless expenses.

X. Place of fulfilment, place of jurisdiction and applicable law

1. Unless otherwise agreed upon, the place of fulfilment of our deliveries shall be the delivering plant in the case of ex works deliveries and our warehouse in any other cases of a delivery. The place of jurisdiction for any disputes arising out of the contractual relationship shall be Bielefeld. In any case, we shall be entitled to proceed against the customer also at his place of jurisdiction.
2. Insofar as the customer is a merchant, a legal entity under public law or a special fund under public law, the place where our registered office is situated shall be the exclusive place of jurisdiction for all disputes ensuing from the contractual relationship. We are also entitled to take legal action at the court having jurisdiction for the customer's registered office. The German version of the present General Terms and Conditions for Sale and Delivery shall be decisive for the business relationships with our customers. To the extent we are providing our customers with a version in the English language, this has to be considered as a service provided to our customer. This service shall have no impact on the validity of the German contractual status.
3. This contract and the entire legal relationship between the parties is governed by the laws of the Federal Republic of Germany excluding the UN-Convention on Contract for the International Sale of Goods (CISG).

XI. Final provisions

1. Should any provision of the present General Terms and Conditions or any provision of any other agreement be or become invalid, this shall not affect the validity of any of the remaining provisions and agreements.
2. To the extent there is lack of provisions as a consequence of the preceding paragraph or in default of a contractual agreement, the contracting parties undertake to immediately work towards an agreement corresponding legally and economically to the intentions of the agreement as a whole by taking into account the present General Terms and Conditions for Sale and Delivery.