

Conditions of Sale and Supply

of E. Ernst GmbH, D-77704 Oberkirch-Zusenhofen

1. General:

- 1.1 Our Conditions of Sale and Supply shall apply exclusively to all deliveries and performance. The ordering party's General Conditions of Purchase shall not apply even if we do not explicitly reject these. Our Conditions of Sale and Supply shall also apply in the event of us unreservedly fulfilling an order despite being aware of contradictory conditions of the ordering party or those that deviate from our Conditions of Sale and Supply.
- 1.2 Our Conditions of Sale and Supply apply only to companies within the meaning of Sec. 14 of the BGB [German Civil Code] if the contract makes up part of the operation of the company as well as to public sector corporations and public law entities with special funds within the meaning of Sec. 310 of the BGB.

2. Offer, conclusion of contract and scope of supply:

- 2.1 Our offers are subject to change until final confirmation of the order has been issued.
- 2.2 Our order confirmation in written form is determining the scope of delivery; additional agreements and amendments are subject to our confirmation in written form.
- 2.3 The customer's order is binding. We are entitled to accept the order by sending either an order confirmation or the goods to the ordering party within two weeks.
- 2.4 We reserve unrestricted proprietary rights of use on quotations, drafts and other documentation. These may not be made accessible to third parties. Drafts and other documentation pertaining to the offers shall be returned to us without delay if the order is not placed with us.

3. Prices, terms of payment, default:

- 3.1 We reserve the right to increase our prices 6 weeks after contract conclusion if after contract conclusion there is an increase to the factors applied when determining the price, in particular if these are in relation to wage agreements or price increases pertaining to material. We will provide the ordering party substantiation if required to do so.
- 3.2 Insofar as there being no separate agreement, invoices shall be settled within 30 days of the date of issue.
- 3.3 Reimbursement of the contribution towards tooling costs is accounted for in the prices for special products. The ordering party does not acquire ownership of these tools; they remain our property.
- 3.4 Insofar as there being no separate agreement in relation to the term of credit, the customer shall be deemed to be in default of payment 30 days, at the latest, after receiving our invoice. In accordance with statutory regulations, pursuant to Sec. 247 of the BGB interest on arrears of 8%-points above the base rate shall be charged p.a. This does not affect our entitlement to assert claims for further damages.
- 3.5 Retention of payment or an offset in respect of counter claims is only permissible if these counter claims have been acknowledged by us or are undisputed or have been finally determined by court order. Furthermore, the right of retention may only be exercised if the counter claim stems from the same contract.

4. Delivery period:

- 4.1 Deadlines for delivery and performance are only binding to us after we have explicitly acknowledged these in written form. Transactions for delivery at a fixed date must be explicitly agreed as such. The time for delivery begins upon receipt of the order confirmation; however, not before the ordering party has submitted any necessary documentation.
- 4.2 The time for delivery shall be deemed to have been maintained if the object of delivery is dispatched before expiration thereof, or notification of availability has been given.
- 4.3 The time for delivery shall be extended insofar as is reasonable in the event of labour disputes, in particular strikes or closeouts, as well as in the event of unforeseen circumstances for which we cannot be held accountable. This also applies if subcontractors experience the aforementioned circumstances.
- 4.4 If our performance is overdue, the ordering party is entitled to demand compensation; this amounts to one half of a percent of the value of the part of the overall delivery that cannot be used as a result of the delay for every full week of delay; however, total compensation shall not exceed 5% of the overall value of the goods. If the delay is wilful or a result of gross negligence, we shall be deemed liable for foreseeable damages in accordance with statutory requirements. The right of withdrawal held by the ordering party remains unaffected.

5. Risk transfer and shipping:

- 5.1 Risk is transferred to the ordering party at the latest from the time the objects of delivery are dispatched. This applies also in respect of partial deliveries and/or if we have assumed responsibility for other services, e.g. shipping costs or transportation.
- 5.2 If dispatch is delayed due to reasons for which the ordering party can be held responsible, risk is transferred to the ordering party from the day at which the goods are ready for dispatch.
- 5.3 If required, the consignment will be insured in accordance with the ordering party's instructions and at the ordering party's expense.
- 5.4 Partial deliveries of a reasonable size are permissible.

6. Defects as to quality or title:

- 6.1 We shall fulfil the agreed performance in accordance with both the commonly accepted technical standards of the industry at the time the order is placed and the relevant statutory requirements. If the manner of production and/or the material composition is specified by the customer, we cannot be held liable for defects insofar.

- 6.2 Upon delivery, the ordering party is obliged to inspect the consignment immediately; written notification of any flaws must be made within 8 days of delivery or in respect of hidden flaws, within 8 days of discovery.
- 6.3 Insofar as performance provided by us displays a defect as to quality or title (hereinafter: defect) within the period of limitation, the cause of which already existed at the time of risk transfer, at our discretion the ordering party is entitled to obtain supplementary performance in the form of a rectification of defects or an additional delivery. Associated expenses such as labour, material, transportation and delivery costs shall only be carried by us if these expenses are not increased as a result of the object of delivery subsequently being moved to a location other than the address of the ordering party, unless this corresponds with the specified use thereof. Replaced parts are our property and shall be returned to us.
- 6.4 If the supplementary performance is unsuccessful, the ordering party is, at its own discretion and notwithstanding any entitlement it holds to compensation for damages or costs in accordance with item 7, entitled to a reduction of the reimbursement or, insofar as our breach of duty is of an appropriate magnitude, to withdraw from the contract.
- 6.5 The preconditions for us to be held liable for defects are that
 - a) these are not a result of improper or inappropriate use; incorrect assembly or commissioning by the ordering or a third party; usual wear; incorrect or careless treatment; inappropriate production facilities; alternative materials; defective construction work; chemical, electrochemical or electrical influences - insofar as these circumstances not being caused by us;
 - b) the ordering party is, under consideration of an appropriate retention payment, not in arrears.
- 6.6 The ordering party shall allow us according adequate discretion – upon agreement with us - sufficient time and opportunity in order to conduct the repairs or replacements we deem necessary. Otherwise we shall be released from any resulting harmful effects because the ordering party did not allow us sufficient time and opportunity to conduct the necessary repair and/or deliver a replacement. The ordering party is only entitled to conduct or organise a repair by itself or a third party and to demand reimbursement of associated costs in urgent cases that endanger industrial safety and to prevent disproportionate damage, or if we have delayed in repairing the defect. We must be notified of imminent disproportionate damage without delay.
- 6.7 The period of limitation for material defect claims is 12 months from the passing of risk. This applies only if Sec. 438 (2) (buildings, building related equipment) or Sec. 479, Par. 1 (right to recourse) does not provide for longer periods. The warranty period for replacement parts or rectification of defects expires at the same time as the warranty period applicable to the original object of delivery.
- 6.8 The right to recourse held by the ordering party against us applies only insofar as the ordering party not making agreements with its customer that exceed the statutory requirements in respect of material defect claims. If claims are asserted against the ordering party due to new goods having a material defect, the ordering party is obliged to inform us of the situation without delay. The ordering party must require the same of its customer if this is a company. We reserve the right to fulfil claims asserted by a customer against the ordering party by independently assuming the role of principal. In this case, fulfilment of the claims of the customer shall be simultaneously deemed to be fulfilment of any eventual claims made by the ordering party.
- 6.9 Retention of payment by the ordering party that is associated with the notification of material defects may only be asserted to an extent that is appropriate in relation to the material defects if the ordering party's claims are undisputed or have been finally determined by court order. If notification of material defects is unjustified, we are entitled to demand reimbursement from the ordering party for costs incurred.

7. Compensation for damages or costs:

- 7.1 We shall be deemed liable in accordance with the statutory provisions should the ordering party assert any claims for compensation for damages or costs (hereinafter: compensation), which result from us acting wilfully or with gross negligence; this applies by analogy to our representatives or vicarious agents. Furthermore, we shall be deemed liable in accordance with statutory provisions if we knowingly infringe a fundamental contractual duty as well as in cases concerning death and injury to body and health and insofar as corresponding guarantees have been made,;
- 7.2 Compensation for the infringement of a fundamental contractual duty is limited to damage that is typically predictable unless we have acted wilfully or with gross negligence and unless we are liable for death and injury to body and health or for guarantees assumed by us. The period of limitation for these compensatory claims is 12 months.
- 7.3 Any liability for damages exceeding the provisions of no. 7.1. and 7.2. is excluded, irrespective of the legal nature of the claim. In particular, we cannot be held liable for damages that do not affect the object of delivery directly, such as loss of revenue, loss of production capabilities, product recalls or other financial losses incurred by the ordering party.
- 7.4 The mandatory provisions of the Product Liability Act remain unaffected.
- 7.5 Claims by the ordering party for compensation for costs are restricted to the amount necessary for the fulfilment of the contract.
- 7.6 The limitation or exclusion of our liability applies in equal measure to the personal liability of our employees, workers, co-operators, representatives and vicarious agents.

8. Retention of title:

- 8.1 We retain ownership of the object of delivery until receipt of all payments arising from the business relationship with the ordering party. The ordering party must inform us immediately in the event of the seizure of the goods to which we have retained ownership or other interventions by third parties.
- 8.2 The ordering party is entitled to market the object of delivery in the scope of ordinary business. However, irrespective of whether the goods to which we have retained ownership have been processed, the ordering party assigns to us any corresponding claim it holds against the customer or a third party. The ordering party remains permitted to collect corresponding claims after the assignment. Our entitlement to independently collect any claim remains unaffected by this; however, we will not disclose the assignment if the ordering party meets its liabilities to pay in an orderly manner. We are entitled to demand the following of the ordering party: disclosure of the assigned claims together with the respective debtors, any information needed to facilitate collection, corresponding documentation, and that debtors are notified of the assignment. If the object of delivery is sold together with other goods to which we do not hold ownership, the claim held by the ordering party against the customer is assigned to the value of the price agreed between us and the ordering party.
- 8.3 Processing or alteration of the goods to which we hold ownership will be conducted by the ordering party on our behalf. If the goods to which we hold ownership are processed with other items, which are not our property, we hold co-proprietary rights to the newly produced item. The extent of co-ownership is determined by calculating the value of the goods provided by us in relation to the value of all other articles used in production at the time of processing. The provisions pertaining to the goods to which we hold ownership apply by analogy to the newly produced item.
- 8.4 The ordering party is obliged to insure the goods for the period of retention of title against theft, destruction, fire, water and other damage and to provide us with substantiation thereof. If this does not occur, we are entitled to arrange insurance at the expense of the ordering party.
- 8.5 The retention of title and securities to which we are entitled remain effective until full release from any contingent liabilities (e.g. payment by so called cheque procedure), which we have entered into in the interest of the ordering party.
- 8.6 If the laws of the country in which the object of delivery is located do not permit retention of title, we are entitled to exercise all other rights over the object of delivery. The ordering party is obliged to support any measures we decide upon in order to protect our right to ownership or, in its place, any other right in relation to using the object of delivery as security.

9. Tooling:

If specific tooling is manufactured by us or a third party on our behalf in order to fulfil an order, this will only be used for orders made by the ordering party if explicitly agreed and if, in respect of duties pertaining to payment and acceptance, the account the ordering party holds with us remains in good standing. We are only obliged to maintain or replace the tooling at no cost if this is necessary in order to meet the output volumes guaranteed to the ordering party. Our commitment to retention expires 2 years after the last partial delivery for which the tooling was used and prior notification to the ordering party.

10. Infringement of third party industrial property rights:

Insofar as we supply in accordance with drawings, models or samples provided by the ordering party, the ordering party extends to us a guarantee that the manufactured object does not infringe the property rights of third parties. If a third party makes reference to property rights it holds and prohibits us from manufacturing or delivering the object, we are entitled to cease production or delivery and to demand reimbursement of associated costs. If we incur any damage in connection with the infringement of property rights or the assertion of property rights, the ordering party shall be held liable for compensation.

11. Place of jurisdiction, miscellaneous:

- 11.1 Place of performance for the delivery is the manufacturer's plant, place of performance for payment is the registered address of our business.
- 11.2 Place of jurisdiction is Oberkirch; however, we are entitled to bring suit against the ordering party at any other court.
- 11.3 This contract is subject to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods and the regulations of private international law shall be excluded.