

General Terms and Conditions of Delivery and Payment of E.V.I. GmbH, 82061 Neuried

§ 1 Scope of Application

(1) These terms and conditions of delivery and payment shall apply exclusively to entrepreneurs, legal entities under public law or special funds under public law within the meaning of Section 310 (1) of the German Civil Code. We will only recognise any terms and conditions of the customer that are contrary to or deviate from our terms of delivery and payment if we expressly agree to their validity in writing.

(2) These terms and conditions of delivery and payment shall also apply to all future transactions with the Purchaser, insofar as they relate to legal transactions of a related nature.

§ 2 Offer and conclusion of contract

If an order is to be regarded as an offer according to § 145 BGB, we can accept it within two weeks.

§ 3 Documents provided

We reserve the right of ownership and copyright to all documents provided by us to the customer in connection with the placing of the order, such as calculations, drawings, etc. These documents may not be made available to third parties unless we give the customer our express written consent to do so. If we do not accept the customer's offer within the period set out in § 2, these documents must be returned to us immediately.

§ 4 Prices and Payment

(1) Unless otherwise agreed in writing, our prices are valid ex works excluding packaging and plus VAT in the applicable amount. Costs of packaging will be invoiced separately.

(2) Payment of the purchase price must be made exclusively to our accounts No. DE19 7002 0270 0040 4455 01 and DE84 7025 0150 0022 9310 83. The deduction of cash discount is only permissible if a special written agreement has been made.

(3) Unless otherwise agreed, the purchase price must be paid within 10 days of invoicing. Interest on arrears will be charged in the amount of 9 percentage points above the respective base interest rate p.a.. We reserve the right to assert higher damages caused by delay.

(4) Unless a fixed price agreement has been made, reasonable price changes due to changes in wage, material and distribution costs for deliveries made 3 months or later after the conclusion of the contract are reserved.

§ 5 Offsetting and rights of retention

The Purchaser shall only be entitled to offset if his counterclaims have been legally established or are undisputed. The customer is only entitled to exercise the right of retention to the extent that his counterclaim is based on the same contractual relationship.

§ 6 Delivery time

(1) The start of the delivery time specified by us presupposes the timely and proper fulfilment of the obligations of the customer. The objection of non-performance of the contract is reserved.

(2) If the customer is in default of acceptance or culpably violates other obligations to cooperate, we shall be entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. Further claims are reserved. If the above conditions are met, the risk of accidental loss or accidental deterioration of the purchased item shall pass to the customer at the time when the customer has become in default of acceptance or debtor.

(3) In the event of a delay in delivery caused by us not intentionally or through gross negligence, we shall be liable for each completed week of delay within the scope of a lump-sum delay compensation in the amount of 3% of the delivery value, but not more than 15% of the delivery value.

(4) Further statutory claims and rights of the Purchaser due to a delay in delivery shall remain unaffected.

§ 7 Transfer of Risk upon Dispatch

If the goods are shipped to the customer at the request of the customer, the risk of accidental loss or accidental deterioration of the goods shall pass to the customer upon dispatch to the customer, at the latest upon leaving the factory/warehouse. This applies regardless of whether the goods are shipped from the place of performance or who bears the freight costs.

§ 8 Retention of Title

(1) The goods remain the property of the seller until full payment of all claims arising from the business relationship, including ancillary claims, claims for damages and cashing of cheques and bills of exchange.

(2) The retention of title remains in place even if individual claims of the seller are included in a current invoice and the balance is drawn and acknowledged.

(3) The Purchaser shall be entitled to resale, further processing or installation of the goods subject to retention of title only in consideration of the following provisions and only with the proviso that the claims pursuant to Clause 5 shall actually be transferred to the Seller.

(4) The Purchaser's rights to sell goods subject to retention of title in the ordinary course of business shall end with the revocation by the Seller as a result of a sustained deterioration in the Purchaser's assets, but at the latest with the Purchaser's cessation of payment or with the application or opening of insolvency proceedings over his assets. Furthermore, the sale of the goods subject to retention of title is excluded to those customers who have excluded or restricted the assignment of the remuneration claims against them and have thereby foiled the advance assignment.

(5) The Purchaser hereby assigns to the Seller the claims with all ancillary rights arising from the resale of the goods subject to retention of title - including any balance claims. If the customer has sold the claim within the framework of real factoring, the seller's claim becomes due immediately and the customer assigns the claim against the factor that takes its place to the seller and immediately forwards his sales proceeds to the seller. The seller accepts this assignment.

(6) The customer is authorized to collect the assigned claims as long as he meets his payment obligations. The direct debit authorisation expires upon revocation, but at the latest upon payment default of the customer or in the event of a significant deterioration of the customer's financial situation. In this case, the seller can threaten the customer with debt collection by himself or commissioned third parties. After the expiry of the deadline, the seller is authorised by the purchaser to inform the customers of the assignment and to collect the claims himself. The Purchaser shall be obliged to provide the Seller upon request with a precise list of the claims to which the Purchaser is entitled, including the name and address of the Purchasers, the amount of the individual claims, the date of the invoice, etc., and to provide the Seller with all information necessary for the assertion of the assigned claims and to permit the verification of this information.

(7) If the value of the collateral available to the Seller exceeds its total claims by more than 20%, the Seller shall be obliged to release collateral at its discretion at the request of the Purchaser or a third party affected by the Seller's overcollateralization.

(8) Pledging or transfer of title by way of security of the goods subject to retention of title or the assigned claims shall be inadmissible. The seller must be notified immediately of garnishments, stating the pledgee.

(9) If the seller takes back the delivery item due to the retention of title, a withdrawal from the contract shall only be deemed to exist if the seller expressly declares this. The seller can satisfy himself from the returned reserved goods by direct sale.

(10) The Purchaser shall keep the goods subject to retention of title for the Seller free of charge. He must insure them against the usual dangers such as fire, theft and water to the usual extent. The Purchaser hereby assigns to the Seller his claims for compensation, which he is entitled to from damages of the above-mentioned kind against insurance companies or other persons obliged to pay compensation, in the amount of the invoice value of the goods. The seller accepts the assignment.

(11) All claims as well as the rights arising from the retention of title to all special forms specified in these Terms and Conditions shall remain in force until they have been fully released from contingent liabilities (e.g. bill of exchange liability) entered into by the Seller in the interest of the Purchaser.

§ 9 Warranty and Notice of Defects as well as Recourse / Manufacturer's Recourse

(1) The Purchaser's warranty rights presuppose that the Purchaser has duly complied with its obligations to inspect and complain under Section 377 of the German Commercial Code (HGB).

(2) Claims for defects shall become statute-barred 12 months after delivery of the goods delivered by us to our customer. The above provisions do not apply to the extent that the law prescribes longer deadlines in accordance with Section 438 (1) No. 2 of the German Civil Code (Buildings and Objects for Buildings), Section 445b (1) of the German Civil Code (Right of Recourse) and Section 634a (1) of the German Civil Code (Construction Defects). Before returning the goods, our consent must be obtained.

(3) If, despite all care taken, the delivered goods have a defect that already existed at the time of the transfer of risk, we will repair the goods or deliver replacement goods at our discretion, subject to timely notice of defects. We must always be given the opportunity to remedy the defect within a reasonable period of time. Recourse claims remain unaffected by the above provision without restriction.

(4) If subsequent performance fails, the Purchaser may withdraw from the contract or reduce the remuneration - without prejudice to any claims for damages.

(5) Claims for defects shall not exist in the case of only insignificant deviation from the agreed quality, in the event of only insignificant impairment of usability, in the event of natural wear and tear or wear and tear, as well as in the case of damage that occurs after the transfer of risk as a result of incorrect or negligent handling, excessive stress, unsuitable equipment, defective construction work, unsuitable building ground or due to special external influences that are not covered by the contract are required. If repair work or modifications are carried out improperly by the customer or third parties, there are also no claims for defects for these and the resulting consequences.

(6) Claims by the Purchaser on account of the expenses necessary for the purpose of subsequent performance, in particular transport, travel, labour and material costs, shall be excluded insofar as the expenses increase because the goods delivered by us have subsequently been taken to a place other than the Purchaser's establishment, unless the shipment corresponds to its intended use.

(7) The Purchaser's claims for recourse against us shall only exist to the extent that the Purchaser has not entered into any agreements with its Purchaser that go beyond the legally binding claims for defects. Paragraph 6 shall also apply mutatis mutandis to the extent of the Purchaser's right of recourse against the Supplier.

§ 10 Miscellaneous

(1) This contract and the entire legal relationships of the parties are subject to the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

(2) The place of performance and exclusive place of jurisdiction and for all disputes arising from this contract is our place of business, unless otherwise stated in the order confirmation.

(3) All agreements made between the parties for the purpose of executing this contract are set out in writing in this contract. This also applies to a waiver of the written form.

(4) Should individually provisions of this contract be or become invalid or contain a loophole, the remaining provisions shall remain unaffected. The parties undertake to replace the invalid provision with such a legally permissible provision that comes as close as possible to the economic purpose of the invalid provision or fills this gap.

As of 01.12.2024