

General Conditions of Sale and Delivery of ER&GE GmbH

1. General and Area of Application

- 1.1. The following provisions shall only apply if the Buyer is a company (§ 14 BGB [German Civil Code]), a legal person under public law or a special fund under public law.
- 1.2. All deliveries, services and offers of the Seller shall be carried out exclusively based on these General Conditions of Delivery. These are a part of all contracts that the Seller concludes with their Contract Partners (hereinafter referred to as »Customers«) regarding the deliveries or services being provided by the Seller. They shall also apply for all future deliveries, services or offers to the Customer, even when they are not separately agreed upon again.
- 1.3. Terms and conditions of the Customer or third parties shall not apply, even if the Seller does not expressly object to their application in an individual case. Even if the Seller makes reference to a document that contains or refers to terms and conditions of the Customer or a third party, there shall be no consent to the application of those terms and conditions.

2. Offer and conclusion of contract

- 2.1. All offers from the Seller are non-binding and subject to alteration, provided that they are not expressly identified as binding or contain a certain acceptance period. The Seller may accept orders or assignments within fourteen days upon receipt.
- 2.2. The solely decisive document for legal relationships between the Seller and the Customer is the purchase agreement concluded in writing, including these General Conditions of Delivery. The purchase agreement fully reflects all agreements between the contracting parties regarding the Contractual Object. Verbal commitments from the Seller before the conclusion of the contract are legally non-binding and verbal agreements between the contracting parties shall be replaced by the written contract, provided that they do not explicitly state that they have continued binding applicability.
- 2.3. Supplements and modifications to the agreements made including these General Conditions of Delivery must be in writing in order to be effective. Telecommunicative transfer, particularly by fax or email, shall suffice for the preservation of the written form, provided that a copy of the signed statement is provided.
- 2.4. Information from the Seller regarding the object of delivery or service (e.g. weight, dimensions, utility values, durability, tolerances and technical details) as well as representations of the same (e.g. illustrations and diagrams) are only approximately applicable insofar as the usability does not require an exact match. They are not guaranteed quality characteristics, but descriptions or markers of delivery or service. Customary deviations and deviations that occur due to statutory requirements or that represent technical improvements, and the replacement of components with equivalent parts are permitted provided that they do not impair the usability for the purpose provided in the contract.
- 2.5. The Seller reserves the ownership or copyright for all offers and quotes they provide, and illustrations, diagrams, calculations, brochures, catalogues, models, tools and other documents and aids provided to the Customer.

3. Prices and payment

- 3.1. The prices apply for the scope of service and delivery stated in the order confirmations. Extra or special services will be calculated separately. The prices shall be in EUROS, ex works and including the costs of standard packaging, but excluding statutory VAT, and duties, fees and other public taxes in the case of exportation.
- 3.2. Provided that the prices are based on the list prices of the Seller and the delivery only takes place more than four months after the conclusion of the contract, the list prices of the Seller that are valid at the time of delivery (in each case minus an agreed percentage or fixed discount) – subject to individual contractual agreements – shall apply. The Seller shall always be entitled (independent of the agreement of list prices) to correspondingly adjust prices for contracts with a delivery time of more than four weeks according to cost increases of raw materials on a petrochemical basis that may have occurred.
- 3.3. Invoice amounts must be paid within thirty days without any deduction, provided that nothing different has been expressly agreed upon in writing. Receipt by the Seller is decisive for the payment date. Cheques shall only be valid as payment after cashing. Should the Customer fail to pay by the due date, the outstanding amounts shall accrue interest at a rate of 5% p.a. from the due date; the application of higher interest and further debts in cases of delay shall remain unaffected. Should the Customer default on one payment, all other payments due by the Customer may be made payable.
- 3.4. Offsetting with counterclaims by the Customer or the withholding of payments due to such claims shall only be permissible as long as the counterclaims are uncontested or legally determined.
- 3.5. The Seller is entitled to only carry out or provide outstanding deliveries or services against advance payment or security if circumstances becomes known to them after the conclusion of the contract that are likely to reduce the creditworthiness of the Customer and because of which the payment of outstanding receivables by the Seller from previous deliveries of the same product range is threatened.

4. Delivery and delivery time

- 4.1. Deliveries are carried out ex works.

- 4.2. Time periods and dates prospectively by the Seller for deliveries and services are only approximate, unless a fixed time period or date is expressly granted or arranged. If a consignment has been arranged, delivery times and dates shall relate to the time point of transfer to the haulage company, freight forwarder or other third parties assigned with the transportation.
- 4.3. Notwithstanding their rights in relation to defaults by the Customer, the Seller may ask the Customer for an extension or postponement of the delivery and service provision time periods by the time period, in which the Customer fails to fulfil their contractual obligations.
- 4.4. The Seller shall not be liable for impossibility to deliver or late deliveries if this has been caused by force majeure or other unforeseeable events at the time of the conclusion of contract (e.g. industrial problems of any kind, difficulties in material or energy procurement, transport delays, strike, lawful lockouts, shortage of operational labour, difficulties in acquiring necessary official approval, official measures or absent, incorrect or late supply by suppliers), for which the Seller is not responsible. If such events make it significantly more difficult or impossible for the Seller to carry out a delivery or provide a service and the hindrance is not just temporary, the Seller shall be entitled to withdraw from the contract. In cases of temporary hindrances, the delivery or service provision time periods shall be extended or postponed by the time period of the hindrance plus an appropriate lead time. If the Customer cannot reasonably accept the delivery or service as the result of the delay, they may withdraw from the contract with immediate written declaration to the Seller.
- 4.5. The Seller is only entitled to carry out partial deliveries if:
 - partial delivery is applicable for the Customer within the framework of the contractual intended use,
 - the supply of the remaining goods is ensured, and
 - no significant additional expenses or costs are incurred by the Customer because of this (unless the Seller agrees to cover the costs).
- 4.6. If the Seller falls behind on a delivery or service provision or if it becomes impossible for them to carry out a delivery or service, regardless of which reason, the liability of the Seller for compensation for damages shall be limited in accordance with § 8 of these General Conditions of Delivery.
5. **Place of delivery, dispatch, packaging, transfer of risk, acceptance**
 - 5.1. The place of performance for all obligations resulting from the contractual relationship shall be Paderborn, provided that nothing else has been agreed upon. Should the Seller also be responsible for installation, the place of performance shall be the place where the installation is to be carried out.
 - 5.2. The mode of dispatch and packaging are subject to the dutiful judgement of the Seller.
 - 5.3. The risk shall be transferred to the Customer upon transfer of the item of delivery to the haulage company, freight forwarder or other third party assigned to carry out the dispatch at the latest (whereby the beginning of the loading process shall be definitive). This shall also apply if partial deliveries are being carried out or the Seller has also taken on other services (e.g. dispatch or installation). Should the dispatch or transfer be delayed as the result of circumstances caused by the Customer, the risk shall be transferred to the Customer from the day on which the item of delivery is ready for dispatch and the Seller has demonstrated this to the Customer.
 - 5.4. Storage costs after the transfer of risk shall be borne by the Customer. In cases of storage by the Seller, the storage costs shall amount to 0.25% of the invoice amount of the items to be stored for each full week. The right to assert and prove other or lower storage costs is reserved.
 - 5.5. The dispatch will only be insured upon express wish by the Customer and at their expense against theft, breakage, transport, fire and water damage and other such insurable risks.
6. **Guarantee, material defects**
 - 6.1. The guarantee period shall be from one year upon delivery or, if acceptance is necessary, upon acceptance.
 - 6.2. All indications of dimensions and properties of plastics and plastic products are based on a normal temperature at the company's premises of 22 °C. Changes of properties of products that are based on differing storage or production conditions shall not represent defects.
 - 6.3. The delivered items must be checked immediately after handover to the Customer or the third party determined by them. Regarding obvious defects or other defects that would have been recognisable upon immediate, careful inspection, they shall be considered approved by the Customer if the Seller does not receive a written notice of defect that identifies the type and extent of the defect within 8 working days after handover. Regarding other defects, the object of delivery shall be considered approved by the Customer if no notice of defect is provided within seven working days, demonstrating the defect; if, however, the defect was already noticeable to the Customer at an earlier point in time during normal use, that earlier point in time shall be considered the beginning of the notification period. At the request of the Seller, a rejected item of delivery must be sent back to the Seller, carriage paid. In the case of legitimate notices of defect, the Seller shall compensate the cheapest cost of delivery; this does not apply if the costs increase because the item of delivery is at another location than the location of intended use.

- 6.4. The guarantee shall be inapplicable if the Customer changes or allows third parties to change the item of delivery without the permission of the Seller, hereby making rectification of defects impossible or more difficult. In any case, the Customer must bear additional costs that arise due to alterations.
- 6.5. The supply of used items arranged in individual cases with the Customer shall be carried out with the exclusion of any guarantee for material defects.

7. Property rights

- 7.1. The Seller shall ensure under the provisions of this § 7 that the item supplied is free from industrial property rights or copyrights of third parties. Each contract party will inform the other contract party in writing immediately if any claims against them are made due to a violation of such rights.
- 7.2. In the case that the article of sale violates an industrial property right or copyright of a third party, the Seller shall alter or replace the article of sale according to their choice and at their own expense, so that no rights of third parties are violated, but that the article of sale continues to fulfil the contractually agreed functions, or create a licence agreement for the use right for the Customer. Should the Seller not succeed in doing this within an appropriate time period, the Customer shall be entitled to withdraw from the contract or reduce the purchase price appropriately. Any claims for compensation by the Customer shall be subject to the limits of § 8 of these General Conditions of Delivery.
- 7.3. In cases of rights violation by products from other manufacturers that are supplied by the Seller, the Seller shall, at their discretion, assert their claims against the manufacturers and pre-suppliers to the account of the Customer or assign them to the Customer. Claims against the Seller may only be made according to this § 7 if the legal assertion of the above-mentioned claims against the manufacturers and pre-suppliers was without success or, for example because of insolvency, futile.

8. Liability for damages due to blame

- 8.1. The liability of the Seller for compensation, regardless of the legal basis, especially because of impossibility, delay, defective or incorrect delivery, breach of contract, violation of duties in contract negotiations and unauthorised actions shall be limited in accordance with this § 8, if blame occurs in each case.
- 8.2. The Seller shall not be liable in the case of simple negligence of their bodies, legal representatives, employees or other such agents, provided that there is no infringement of essential contractual obligations. Essential contractual obligations are the on-time delivery, freedom from defects that impair the product's functionality or serviceability more than just negligibly, and advice and protection obligations that serve to enable the Customer to use the article of sale in accordance with the contract, or aim to protect life and limb of the Customer's employees or protect their property from significant damage.
- 8.3. Should the Seller be liable for compensation in accordance with § 8.2, this liability shall be limited to damages that the Seller had anticipated at the time the contract was concluded, or that they would have to have anticipated when applying customary caution. Furthermore, indirect damage and consequential damage that are the result of a defect of the article of sale are only eligible for compensation if such damage can typically be expected with the proper use of the article of purchase.
- 8.4. The above-mentioned exclusions and limitations of liability apply to the same extent in favour of bodies, legal representatives, employees and other such agents of the Seller.
- 8.5. If the Seller provides technical information or acts in an advisory manner and this information or advice is not within the contractual scope of services for which they are liable, this shall be non-compensable and under the exclusion of all liability.
- 8.6. The limitations of this § 8 shall not apply for the liability of the Seller due to deliberate actions, for guaranteed quality features, loss of life, physical injuries or damage to health, or in accordance with product liability law.

9. Retention of title

- 9.1. The subsequently agreed retention of title serves to safeguard all existing current and future receivables of the Seller from the Customer that result from the currently existing supply relationship between the contract parties (including outstanding balances from a limited current account agreement resulting from this supply relationship).
- 9.2. Goods supplied by the Seller to the Customer shall remain the property of the Seller until the payment of all secured receivables. The goods and the goods appearing in their place and included within the scope of the retention of title in accordance with the following provisions will hereinafter be referred to as »Reserved Goods«.

- 9.3. The Customer shall be entitled to process and sell the Reserved Goods in the ordinary course of business until a case of enforcement (§ 9.8) occurs. Hypothecation and security transfer is not permitted.

- 9.4. Should the Reserved Goods be processed by the Customer, it shall be agreed that the processing is carried out in the name of and for the account of the Seller as a manufacturer and the Seller is directly acquiring the ownership or – if the processing is carried out using materials with several owners or if the value of the processed item is more than the value of the Reserved Goods – is obtaining co-ownership (fractional share) of the newly obtained object in proportion to the value of the Reserved Goods with the value of the newly created object. Should the Reserved Goods be combined or inseparably mixed with other objects to form a single item and one of the other objects is to be seen as the main item, co-ownership of the single item shall be transferred to the Seller in the relationship mentioned in Point 1.

- 9.5. In the case of a resale of the Reserved Goods, the Customer will hereby cede the resulting receivables from the Purchaser to the Seller – in the case of co-ownership of the Seller of the Reserved Goods, proportionately according to the share of co-ownership. The same shall apply for other receivables that occur in place of the Reserved Goods or occur otherwise with regard to the Reserved Goods, e.g. insurance claims or claims from unauthorised actions in cases of loss or destruction. The Seller shall revocably authorise the Customer to incorporate the receivables assigned to the Seller in their own name. The Seller may only revoke this collection authorisation in a case of enforcement.

- 9.6. Should third parties access the Reserved Goods, in particular via seizure, the Customer shall indicate the ownership of the Seller immediately, in order for them to assert their property rights. If the third party is not able to reimburse the Seller for legal or extrajudicial costs in this connection, the Customer shall be liable to reimburse the Seller.

- 9.7. The Seller shall be obliged to release securities they are entitled to if their value exceeds the receivables to be secured by more than 20%.

- 9.8. Should the Seller withdraw from the contract in the case of actions of the Customer that are contrary to the contract – especially payment default (case of enforcement), they shall be entitled to demand the surrender of the Reserved Goods.

10. Final provisions

- 10.1. Receivables of the Seller may be assigned to third parties for the payment of amounts from the contractual relationships resulting from these General Conditions of Delivery and the resulting secondary claims.

- 10.2. Should the Buyer be a trader within the meaning of the HGB (German Commercial Code), a legal person under public law or a special fund under public law, the place of jurisdiction – and international place of jurisdiction – for all disputes resulting directly or indirectly from the contractual relationship shall be the head office of the Seller. The same shall apply if the Buyer is a company within the meaning of § 14 of the BGB (German Civil Code). However, the Seller is also entitled in any case to file suits at the place of performance of the supply obligation in accordance with these Conditions of Delivery or an overriding individual agreement, or at a general place of jurisdiction of the Buyer. Overriding statutory provisions, in particular for exclusive competence, shall remain unaffected.

- 10.3. The relationships between the Seller and the Customer shall be exclusively subject to the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods from 11th April 1980 (CISG) shall not apply. The recipient must bear all fees, costs and charges that apply in connection with any successful legal proceedings against them outside of Germany.

- 10.4. Should the contract or these General Conditions of Delivery contain omissions, any legally valid provision shall be considered agreed that the contract parties would have agreed upon in accordance with the economic objectives and the purpose of these General Conditions of Delivery, had they known of the omissions.

- 10.5. Customers are informed that the supplier – exclusively for business purposes – will process and pass on their personal details with the aid of electronic data processing methods in accordance with the provisions of German data protection law.

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