

General Terms and Conditions of Sale and Delivery of EHA Ewald Hildebrandt GmbH & Co. KG

I. Scope

1. All our supplies and services shall be effected in accordance with our General Terms and Conditions of Sale and Delivery as detailed hereunder. Any deviating individual conditions laid down by contractual parties shall only be considered binding for a given Contract when consented to by us in writing. This shall in particular apply to any agreements entered into with employees. At the latest when in receipt of our order acknowledgment the Purchaser shall be deemed to have accepted our Terms and Conditions of Sale and Delivery. An objection shall be made forthwith in writing; the use of any kind of Customer's form shall not suffice.
2. Should individual provisions be ineffective the effectiveness of the Contract in all other respects shall otherwise remain unaffected.

II. Conclusion of Contracts

1. Our offers are always without obligation. The order issued by the Purchaser shall be deemed to be binding. The Contract shall be deemed concluded by submitting a written order acknowledgment within 10 days or by delivering the purchased goods to the Purchaser within this time period (acceptance).
2. Should the order acknowledgment deviate from the purchase order such deviations shall be deemed to have been approved unless a written objection is received by us within 3 days of the order acknowledgment issuing date.

III. Prices and Delivery

1. Provided nothing to the contrary has been agreed all prices are net prices based on our price list currently in effect; the statutory value-added tax shall always be shown separately. The prices shall be understood to exclude packing, freight, and postage charges, unless agreed otherwise.
2. Any delivery dates indicated by us shall be deemed to be approximate. In the event the agreed delivery date has been exceeded by more than 2 weeks, the Purchaser shall be entitled to specify by registered letter an extension period of at least 4 additional weeks. In case EHA is unable to effect delivery within this extension period, Purchaser shall be entitled to withdraw from the Contract provided a warning of rejection has been given in the framework of said extension period.
3. Without a separate notification being required, the agreed delivery period shall be extended by a period during which the Purchaser has not entirely fulfilled its due obligations stemming from this or another transaction in the framework of the business relationship; our rights ensuing from a default of the Purchaser shall remain unaffected otherwise.
4. Any of our deliveries are subject to EHA receiving from its suppliers in due time the correct trading goods, raw and auxiliary materials.
5. Any unforeseen incidents, labor disputes, operational disturbances, deficiencies or shortcomings with respect to labor, goods, or materials as well as other direct or indirect production volume reductions of the goods sold experienced by EHA or its suppliers shall release us from our obligation to effect delivery. In any such cases we reserve the right to exercise the option of either effect delivery after the incidents/events have been resolved or withdraw from the Contract wholly or in part.
6. In the event purchased goods are to be dispatched, the shipment shall be made ex works at the Purchaser's risk. This shall also apply if freight charges and other costs are borne by us. The choice of forwarding route and mode of transport shall be at our discretion with the justified interests of the Purchaser to be duly observed. We shall only take out insurance cover for damage in transit if so instructed in writing by and at the expense of the Purchaser.
7. Deviations in the size of mats and gratings of plus or minus 1.5 % shall be reserved.

IV. Payment Terms

1. Our invoices shall be due for payment upon receipt by Purchaser and shall be payable within a period of 30 days of the date of invoice, net cash (without any deductions).
2. In case of advance payment, immediate payment via bank collection authorization or payment within 10 days of the date of invoice we shall grant a discount of 2 % on the invoice amount. Aside from the discount, remunerations on advance payments shall not be granted. Payments shall be made directly to our Company (to one of our bank accounts).
3. Deviating payment conditions shall be agreed with us in written form. This applies in particular to extending payment due dates, payments by bill of exchange or check-bill transactions. Money orders, checks, and bills of exchange shall only be accepted for payment on condition that the respective collection and discount expenses are charged by us. No liability shall be assumed for the timely presentation and protest. Cash on delivery charges shall be paid by the Purchaser. In the event of a bill protest all outstanding claims/receivables and accepted bills of exchange shall be due for payment without delay.
4. In case several claims are due for payment we shall be entitled to determine in which order the amounts shall be paid.
5. The Purchaser shall be in default when the payment due date as per Clause IV.1 or as per agreement has expired without any further reminder notification being required. In the event the contractual party is merchant, interest in the amount of 8 % p.a. above the respective base interest rate in the sense of Section 247 BGB (German Civil Code) shall be payable as of the due date. We shall be entitled to claim higher proven interest losses.

V. Provision of Security

1. If it becomes apparent after the Contract has been concluded that the payment claim is in jeopardy due to the Purchaser's lack of ability to perform, we shall reserve the right to retain the delivery. Any such danger exists in particular if there is a change in the ownership structure of the Purchaser, payments are not made as contractually agreed, the credits granted have already reached a disproportionate amount or unfavorable information about the Purchaser is received. Unless agreed otherwise, we shall fulfill our contractual obligations as soon as the purchase price has been received or an appropriate security amounting to 110 % is furnished; the reservation of ownership within the meaning of Clause VI shall not be deemed to constitute a security in this respect.
2. In case we ourselves fix a deadline for payment of the purchase price or furnishing the security, we shall be entitled to withdraw from the Contract after the unsuccessful expiry of said deadline.

VI. Reservation of Ownership

1. The title to the goods delivered shall remain with us until all our claims against the Purchaser have been paid in full also with respect to any claims arising from future businesses. If ancillary costs have arisen (bill of exchange costs, financing costs, interest), claims shall not be considered settled before such expenses have been paid.
2. The Purchaser shall be obliged to properly store the goods under reservation of title, protect them against damage and take out reasonable insurance cover for them.
3. The Purchaser shall be allowed to sell the goods to third parties within the scope of an ordinary and proper course of business transaction. In the event the goods supplied by us – irrespective of the value or condition thereof – have been sold or delivered, the Purchaser shall declare the assignment to us of its claims against the buyer including all ancillary rights and claims for damages to which Purchaser may be entitled in the framework of the transaction in the amount of the claims stated in Clause VI. 1. Should the goods delivered by us and subject to title reservation be sold together with other goods to a third party the Purchaser shall be obliged to make an appropriate distinction between the relevant invoice items. Should such a distinction or delimiting of items be missing, that portion of the total price claim shall be deemed to be assigned to us that corresponds to the invoice value of the supplies. In case an open account agreement has been concluded with the Purchaser, the assignment shall apply to the relevant outstanding balance. We accept the declared assignment.

4. The Purchaser is permitted to collect the respective claims. This shall not impair our entitlement to collect the respective claims ourselves. We shall undertake, however, not to collect the assigned claims ourselves as long as Purchaser meets its obligations with respect to the received revenues, is not in default of payment and, in particular, no application for instigation of insolvency proceedings has been filed. Should this be the case, we shall be entitled to be informed of all assigned claims and the respective debtors as well as be furnished the information, data and documents necessary for payment collection, and demand that Purchaser notifies the debtors of the assignment.
5. The Purchaser shall undertake to inform us without delay if a third party has taken hold of the goods under title reservation or the assigned claims, especially if a seizure has been enforced. In such a case the Purchaser shall submit to us without delay a copy of the seizure report as well as an affidavit revealing the identity of the attached goods. Unless the respective third party is able to reimburse us the legal expenses and extra-judicial charges of prosecution, in particular third-party intervention on seizure, the Purchaser shall be liable for any loss in the amount of the legal costs incurred.
6. If a non-assignment clause has been agreed between the Purchaser and its customer, the Purchaser shall be obliged to inform its customer of the advance assignment in the event said customer is not a merchant (Section 354a HGB – German Civil Code).
7. In the event the total marketable value of the securities due to us which includes the securities as per Clause V. from the business relationship exceeds the trade receivables by 20 % or if the nominal amount of the securities exceeds the receivables by 50 %, the securities shall be retransferred if so requested in writing by the Purchaser. The selection of the securities to be retransferred shall be made by us.
8. To the extent the Purchaser is entitled to claims against insurance companies or other third parties as a result of damage, reduction, loss or perishment of security goods or for other reasons, Purchaser shall even now assign these claims to us in advance.
9. In the event the Purchaser is in breach of contract, in particular if it fails to make payment on the due date, we shall be entitled to retrieve the goods. Unless expressly stated by us otherwise, the retrieval of the goods by us shall not constitute a withdrawal from the Contract. Any seizure of the goods by us shall always be construed as a withdrawal from the Contract. After we have retrieved the goods we shall be entitled to exploit/make commercial use of them. Such utilization proceeds shall be offset against the liabilities of the Purchaser less reasonable expenses of said utilization.

VII. Exemption from Liability, Damages, Withdrawal

1. Purchaser shall only be entitled to damages payable by us if we can be held liable for an impairment of performance with such liability being exclusively limited to
 - a) violation of fundamental contractual obligations as a result of at least ordinary negligence or
 - b) an intentional or grossly negligent violation of fundamental contractual obligations,
 - c) violation of duties at least based on ordinary negligence in the event said violation results in detriments to life, body and health.
2. We shall not be held liable for damage resulting, at least also, from the disregard of instructions for use and/or laying enclosed with our goods.
3. Unless the management or senior officers of the company are held guilty of gross negligence, any obligation to pay damages shall be limited to the foreseeable damage typically occurring under this type of contract. A damage is considered unforeseeable if it exceeds the value of the ordered goods. This liability limitation shall not apply to injuries involving harm to life, limb or health.
4. Purchaser shall only be entitled to demand damages in lieu of performance if we have been duly notified by registered letter of a reasonable period of time during which we may effect fulfilment or supplementary performance of the Contract. Such a grace period shall at least amount to 4 weeks. The same applies to a right of withdrawal from the Contract. The period of grace may be combined with the extension period mentioned against Clause III 3.
5. As regards rights of recourse the Purchaser may claim pursuant to Section 478 BGB (German Civil Code) we shall only be held liable for the faulty goods, not exceeding, however, the amount of the invoice value.

VIII. Setoff, Assignment

1. Setoff against a claim raised by us shall only be acceptable in the event such a setoff claim is uncontested or recognized by declaratory judgment.
2. Purchaser shall only be entitled to a retention lien if the counterclaim is uncontested or recognized by declaratory judgment and said counterclaim relates to the same contractual relationship.

IX. Data Processing

We shall be entitled to process the data stemming from the business relation with and received from the Purchaser as stipulated by the provisions laid down in the Federal Data Protection Law.

X. Warranty

1. We warrant the proper condition of the goods, provided they are treated, utilized, and laid, respectively mounted as per the enclosed instructions for use as well as laying instructions.
2. Upon receipt of the goods the Purchaser at its own cost shall check the consignment for completeness and condition (Section 377 HGB – German Civil Code).
3. Within a period of 8 days of receipt of the goods we shall be notified in detail by way of registered letter of any noticeable defects or shortcomings detected. Defects or shortcomings that are not noticeable right away shall be reported to us without delay in the same manner after they have been detected. After a period of 6 months of the passing of the risk defects or shortcomings of whatever nature shall no longer be qualified for complaints/claims. Upon expiry of this preclusion period warranty claims against us can no longer be brought.
4. In case of a warranty claim we shall be entitled to supplementary performance by either rectifying the defect or supplying non-defective goods with the defective products having to be returned to us. We shall be entitled to decline supplementary performance in the event it entails disproportionately high costs.
5. Purchaser shall only have a right of withdrawal or price reduction if and to the extent that we have declined supplementary performance or failure thereof. A failure shall only be deemed to exist if supplementary performance has in vain been attempted three times.
6. If custom-made articles are involved Purchaser shall only be entitled to demand a decrease of the purchasing price by the amount the fault or shortcoming reduces the value of the product in relation to the purchasing price.
7. A guarantee of the quality and/or durability of the products will be issued by us exclusively in writing and expressly termed „Guarantee“.

XI. Place of Fulfillment & Jurisdiction

1. Place of fulfillment for all obligations arising from the present Contract shall be our company seat which is currently in Bochum.
2. Place of jurisdiction shall be our company seat; however, we shall be entitled to instigate proceedings against the Purchaser at the court having jurisdiction over its company seat or residence.
3. The Contract shall be governed by German law. The application of the rules of UN-Convention on Contracts for the International Sale of Goods (CISG) as of 11 April 1980 is excluded.