

## I. General conditions

1. The products and services of EKL AG (hereinafter: EKL) are supplied exclusively in accordance with the following General Terms of Business. Any conflicting or deviating or supplementary conditions of the customer are expressly not recognized and contradicted. General terms of business of the customer shall not apply even if the customer refers to such terms in connection with its order and EKL does not oppose them.
2. Quotations shall be binding for EKL within 30 days from the date of the quotation unless the quotation is marked with the note "subject to change and non-binding" and "subject to prior sale". In this case a contract shall only be concluded after the customer's order has been accepted by EKL.

## II. Prices, set off and withholding rights

1. All prices are meant in EURO ex works including transport packaging without possible freight charges plus the respectively valid legal VAT, unless expressly agreed otherwise in writing.
2. The customer shall only be entitled to set off against such claims and/or exert a withholding right as to such claims which are indisputable, ready for decision or effectively established.

## III. Passing of risks and acceptance

1. Unless agreed upon differently the risk shall be passed on to the customer when the items have been taken to despatch or picked up, this applies to carriage paid deliveries as well. If the despatch of delivery is delayed due to reasons in the responsibility of the customer or acceptance is delayed by the customer the risk shall already be passed on to the customer at the date of the delay.
2. The customer shall not be entitled to refuse the acceptance of deliveries due to negligible defects.

## IV. Examination of goods

1. Immediately upon receipt of the goods the customer shall check that they are complete and in conformity with the delivery papers and examine them for defects. If no written complaint is made within four days of the date of the delivery note, the goods shall be deemed to have been duly and fully delivered except in case of a defect which was not evident upon the examination.
2. If the goods delivered show evident defects or deficient quantities, this must be noted by the customer in writing on the certificate of receipt of the carrier upon delivery. This note must provide a sufficiently clear description of the damage or deficient quantity (notice of defect pursuant to Section 438 German Commercial Code [HGB]).

## V. Permitted distribution of deliveries

The distribution of deliveries by EKL and/or of those products which have been manufactured by using deliveries of EKL shall only be permitted to those countries for which EKL has released delivery in writing. Without any release in writing EKL shall not be held liable in any way. In case the customer carries out such deliveries nevertheless they shall have to exempt EKL from any assertions of claims for damages. Further claims from EKL shall remain unaffected from the above.

## VI. Deadlines and delay

1. Delivery dates are considered non-binding, unless otherwise expressly agreed.  
To become effective, binding delivery dates and deadlines have to be agreed upon in writing.
2. Meeting the delivery and performance obligations of EKL shall require the punctual and appropriate fulfilment of any of the customer's obligations. Otherwise the deadlines shall be prolonged reasonably.

3. Partial deliveries and performances shall be permitted insofar as they are reasonable to the customer.
4. EKL shall not be held responsible for any delays of delivery and performance due to force majeure and due to events which seriously interfere with the delivery of EKL or make it impossible, here especially breakdowns, strike, lockouts, mobilization, wars and riots, also if occurring at EKL's suppliers' or their sub-suppliers', even with binding dates and deadlines. The above shall entitle EKL to postpone the delivery and/or performance for the period of the interference plus a reasonable start-up time or to cancel the contract partially or completely due to the part not yet fulfilled.
5. If a contract penalty has been agreed upon expressly for the case of delayed delivery and EKL gets in delay the customer shall be entitled – if they can credibly demonstrate that a damage has occurred to them – to claim a compensation of 0.5% for each completed week of the delay, in total, however, at a maximum 5% of the price for those parts of the deliveries which could not be used appropriately because of the delay.

### VII. Reservation of ownership

1. Any goods delivered shall remain the property of EKL until any claims, which EKL are entitled to from the overall business relationship with the customer, have been met.
2. The customer shall only be allowed to sell the reserved goods in the course of their usual business under their usual terms and conditions as long as they are not in default in respect to EKL. Further regulations, especially collateral assignments or pledges shall not be deemed permissible. If the customer does not settle the invoice immediately after having received the goods then the customer shall have to make the reservation that ownership will devolve no sooner than payment has been effected completely.
3. If and when the customer resells the reserved goods the customer shall already now assign his claims from the resale including any collateral rights to EKL for security reasons. In case no single price for the reserved goods has been agreed upon when sold together with other items the claim in the ratio of the invoice amount of the reserved goods to the invoice amount of the other goods sold shall be deemed to be assigned.
4. The customer shall be entitled to collect any outstanding accounts from the resale. This permit for collecting debts shall become void in case of revocation which may occur due to important reasons, especially with delayed payment, suspension of payments, a bill failed to be honoured, commencement of insolvency proceedings etc. After prior warning of disclosing the assignment of security EKL shall be entitled to disclose the assignment of security while observing a period of 10 days and make use of the claim assigned. The customer shall undertake to disclose the assignment of security to their customer as well.
5. The customer shall be entitled to process and manufacture the reserved goods. The processing, combination and mixing of the reserved goods are done in lieu of EKL. The customer shall keep the transformed goods for EKL free of charge. Processed or manufactured goods shall also be deemed to be reserved goods.
6. When the reserved goods are processed, combined and mixed with other goods by the buyer EKL shall be entitled to the co-ownership of the new item in the ratio of the invoice amount of the reserved goods to the other goods used. When the ownership of EKL expires over the processing, combination or mixing the customer shall assign to EKL the co-ownership of the new item in the amount of the invoice amount of the reserved goods. This co-ownership shall also be deemed to be reserved goods.
7. The customer shall have to inform EKL immediately of any attachments, seizures or other damaging measures from third parties. In case of delayed payment and other facts which allow the conclusion of the customer's essentially deteriorating solvency EKL shall be entitled to recall the reserved goods which are EKL's sole property. The recall shall not be deemed as a cancellation of contract.

### 8. Clause of release

So far as the amount of all security rights which EKL is entitled to exceeds the amount of all claims secured by more than 10% EKL shall release an according share of the security rights on demand of the buyer.

### VIII. Warranty

1. For the delivery of new items the warranty period shall be one year after delivery. If the Product forms part of a purchase of consumables [Verbrauchsgüterkauf], the rights of the customer under Sections 478, 479 BGB (German Civil Code) shall remain unaffected. In case of doubt, the customer must prove to EKL that the purchase was a purchase of consumables.
2. Claims on account of defects do not exist in the following cases
  - a) in case of an only minor deviation from the quality agreed
  - b) in case of impaired usability to a merely minor extent
  - c) if the product is modified, improperly installed, serviced, repaired, used or exposed to ambient conditions by the customer or third parties which do not correspond to the manufacturer's installation requirements, unless the customer can prove that these circumstances were not the cause of the defect complained of
  - d) if the serial number, type reference or similar identification marks are removed or rendered illegible.
3. In the event of a defect EKL shall either initially repair or replace the goods concerned at its discretion. Replaced parts become the property of EKL. If EKL is unable to repair or replace the goods, if disproportionate costs are involved or if EKL fails to remedy defects within a reasonable extended deadline set in writing, the customer shall have the right either to rescind the purchase contract or to reduce the purchase price. If EKL supplies a replacement product for the purpose of subsequent performance, the customer must return the defective product and pay compensation for the value of the advantages of use.
4. EKL shall be liable for the performances supplied within the re-fulfilment to the same extent as for the original subject of delivery, however no longer than to the expiry of the warranty period valid for the original subject of delivery.
5. Claims of the customer as to expenses necessary for the purpose of re-fulfilment, especially costs of transport, distances travelled, work and material shall be excluded if these expenses are increased because the subject of delivery has been taken afterwards to a site different from the one agreed upon in the contract, unless the transport is in compliance with the use as agreed.
6. If any subject defects are claimed against EKL's customer by their buyers the customer of EKL shall undertake to grant EKL the opportunity of re-fulfilment. All further claims by the customer or claims by the customer other than those provided for in these Terms of Business shall be excluded irrespective of the legal ground therefore, save as otherwise provided for under the terms hereof. This shall not affect the statutory provisions on the purchase of consumer goods [Verbrauchsgüterkauf].

### IX. Liability

1. Save as otherwise provided for in the provisions set forth herein below, further-reaching claims by the customer are excluded – on any legal grounds whatsoever EKL shall not be liable for damage not arising in the goods delivered themselves, in particular EKL shall not be liable for lost profits or other property damage suffered by the customer.
2. This disclaimer of liability shall not apply in the following cases:
  - a) If the cause of damage is the result of intent or gross negligence by EKL or if EKL commits a breach of material contractual obligations due to slight negligence.
  - b) If claims are raised pursuant to the German Product Liability Act [Produkthaftungsgesetz] or on account of impossibility for which EKL is responsible.
  - c) In case of physical injury based on a violation of duty for which EKL, EKL's statutory representatives or agents employed in the performance of EKL's obligations are responsible.

- d) For damages according to clause VI.5.
3. The duty to provide compensation is, at any event, limited to the type of damage typically occurring at the time the contract was entered into.
4. At any event the duty to provide compensation in case of property damage for which EKL is responsible is limited by the amount of cover of the business liability insurance and product liability insurance taken out by EKL.

### IX. Venue and applicable law

German law shall exclusively be applied under exclusion of the UN sales law. Sole venue shall be the district court Ravensburg.

### X. Conclusions

1. Any collateral agreements as well as the assurance of properties have to be carried out in writing. This shall also apply for the revocation of the written form agreed upon.
2. If single provision of these terms and conditions and of additional agreements should be or become ineffective, this will not affect the validity of the terms and conditions in other respects. Those intentions then shall be applicable which come closest to the economic objective of the void clause.
3. The assignment of claims, existing against EKL, to third parties shall be excluded unless EKL consents to such an assignment in writing.
4. The present General Terms and Conditions are the English translation of the General Terms and Conditions prepared in the German language. EKL shall not be liable for any errors in translation or transmission. Insofar the General Terms and Conditions prepared in the German language shall be relevant.

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