

# General Terms and Conditions

– applicable only to merchants –

## 1. CONCLUSION OF CONTRACTS

Our deliveries will only be performed on the basis of the following terms and conditions, which shall also apply to any future deliveries even if they are not announced again. Any terms and conditions of purchase of the Buyer are hereby expressly objected to. They shall not be binding upon us even if we do not object to them again when the contract is concluded. Our General Terms and Conditions shall be considered accepted at the time of the acceptance of the goods at the latest. Purchase contracts or other agreements shall require our written consent, particularly if they amend these Terms and Conditions. Our representatives and travelling salesmen are authorised to act as agents but not to conclude contracts. Any plans, descriptions, images or drawings produced by us shall only be considered binding if this is confirmed specially. All information on dimensions, quantities, weights and structures shall only be considered approximate. Samples shall only be considered as approval samples. Drafts, models, printing screens, tools and embossing punches are included in our prices on a pro-rata basis only and shall therefore remain our property even if the invoiced amounts have been paid. Any drafts, drawings or models supplied by us may only be used by third parties if we have given our prior consent. If no contract is concluded, we shall be entitled to invoice such preliminary work. If we store the tools, we shall only be liable for wilful intent or gross negligence; the storage period shall expire if the Buyer has not placed any further orders related to such tools for two years after the last delivery. If the Buyer prescribes any particular manner in which the order shall be executed by us, he shall be liable for any resulting infringement of third-party property rights and shall be obliged to indemnify us against any related claims.

## 2. DELIVERY AND RISK

Partial deliveries shall be permitted; each partial delivery shall be considered as a separate transaction. All consignments will be transported at the Buyer's risk, even if we bear the freight costs. With the handover of the goods to the carrier, our delivery obligation shall be considered fulfilled. The Buyer shall be free to take out transport or other insurance. If the Customer does not prescribe any particular mode of transport, it shall be chosen at our discretion. Any additional express freight costs shall be borne by the Buyer; the Buyer shall arrange the unloading of the goods. Pursuant to Art. 30 of the C.M.R., in order to secure the claims for damages, any damage in transit or missing items shall, at the time of delivery, be reported to the deliverer in a consignment note or a record and shall be reported to us immediately. Any damage in transit which is discovered later shall also be reported to us immediately. Pursuant to Art. 44, 45 of the C.I.M., in the case of transport by rail or in a lorry belonging to the railway company, the immediate ascertainment of facts and confirmation by the railway company shall be arranged.

## 3. DELIVERY PERIOD AND OBSTRUCTIONS TO DELIVERY

We will adhere to the indicated delivery periods and delivery dates wherever possible; however, we will not assume any liability for it. In the case of force majeure, we shall be entitled to postpone delivery for the duration of the obstruction plus an adequate starting time, or to withdraw from the contract for its portion which has not been fulfilled, without the Buyer being entitled to any compensation. Any disruption of operations, strike, lockout, shortage of energy or raw materials, traffic disruptions, fire, orders of public authorities and other circumstances due to which deliveries become considerably more difficult, or impossible, for us or our suppliers shall be equivalent to force majeure. If our buying sources, or part of them, are no longer available, we shall not be obliged to purchase stocks from third-party suppliers. We shall be entitled to distribute available quantities of goods taking into account our own requirements.

## 4. INVOICING AND PAYMENT

Our prices exclude the statutory value-added tax or import turnover tax. Unless a price has been agreed as a fixed price expressly, the prices applicable on the date of dispatch will be charged for our goods and services. In the case of any price increase occurring between the conclusion of the contract and the

delivery, the Buyer shall be entitled to withdraw from the contract immediately. The weight of the goods which we have determined when the goods were shipped – excluding the packaging – or the quantity of goods, as the case may be, shall be applied for the calculation. Payments shall be made net within 30 days from the invoice date, with the right to set the amounts against any disputed counterclaims or to withhold them after the agreed period of payment being excluded. No discount may be deducted from new invoices if earlier due invoices have not been paid. We will accept discountable bills of exchange only if this has been expressly agreed. Bills of exchange and cheques will only be accepted on account of performance. They will be credited subject to the receipt of the amount, with the value date being the date on which we can dispose of the equivalent amount. The Buyer shall pay bill stamp duties before handing over bills of exchange to us. Discount charges and any additional expenses shall be reimbursed to us. If due dates are exceeded, an interest of 3.5% above the applicable discount rate of the German Central Bank shall become due. In addition, the costs incurred for reminders and for the collection of amounts shall be reimbursed. In the case of any non-compliance with the terms of payment or any other breach of contract, or of any change of the Buyer's financial situation – e.g. delay in payment, production or sales difficulties etc. – we shall be entitled to require the immediate satisfaction of all of our claims and to withdraw from any further delivery obligations without notice, and to take back the goods subject to retention of title or part of them at our choice without withdrawing from the contract.

## **5. RETENTION OF TITLE**

All goods shall remain our property (goods subject to retention of title) until the satisfaction of all of our claims – irrespective of the invoice on which they are based – particularly also until all cheques or bills of exchange which have been delivered in payment by the Buyer have been cashed in and until any and all of our obligations which we may have in relation to cheques and/or bills of exchange have ceased to exist, even if payments for any claims designated in particular have been made. Any processing of the goods subject to retention of title shall occur for us as the manufacturer within the meaning of Art. 950 of the German Civil Code (BGB), without any obligations arising for us. In the case of any processing by the Buyer together with other goods not belonging to us, we shall be entitled to co-ownership of the new item in the ratio of the Buyer's invoice value of our goods subject to retention of title used for the manufactured item to the total of all invoice values of all goods used for the manufacture. If our goods are mixed or combined with other items and, as a result, our ownership of the goods subject to retention of title ceases to exist (Art. 947 and 948 of the BGB), it is hereby agreed that the Buyer's ownership or co-ownership of the mixed inventory or the single object shall pass to us to the extent of the invoice value of our goods subject to retention of title. In such case, the Buyer shall be considered as a depository, without any claims against us arising as a result. Thus, to the items/inventories resulting from the processing or the combination or mixture and to the goods subject to retention of title, the same conditions shall apply. Items/inventories shall be considered as goods subject to retention of title within the meaning of these General Terms and Conditions. The Seller may only sell the goods subject to retention of title as part of his normal business operations and subject to his normal terms and conditions, as long as he properly fulfils his obligations towards us. He shall only be entitled and authorised to resell the goods subject to retention of title provided that the claims arising from the resale will pass to us subject to the following provisions. He shall not be entitled to dispose of the goods subject to retention of title in any other way. The Buyer's claims arising from the resale of the goods subject to retention of title are hereby assigned to us, regardless whether the goods subject to retention of title are sold unprocessed or after processing, and whether they are sold to one or more purchasers. In case the goods subject to retention of title are sold together with other goods not belonging to us, the assignment of the purchase price claim for the resale shall only apply in the amount of the invoice value of the goods subject to retention of title. If the goods subject to retention of title are sold after processing, particularly after any processing together with other goods not belonging to us or after combining/mixing, the assignment shall only apply in the amount corresponding to our co-ownership of the sold goods or the sold inventory. If the goods subject to retention of title are used by the Buyer to comply with any contract to produce a work (*Werkvertrag*) or contract for work and materials (*Werklieferungsvertrag*), the claim arising from such contract to produce a work and materials is hereby assigned to us in advance to the same extent as is stipulated above for any purchase price claims. The Buyer shall be authorised to collect the assigned claims, as long as he properly fulfils his payment obligations towards us. We undertake to release the security to which we are entitled under the above provisions on the Buyer's request and at

our choice if its value exceeds the value of the claim to be secured by more than 25%. Any infringement of our rights by third parties shall be reported to us immediately.

**6. WARRANTY**

Our products shall be supplied in merchantable quality. Minor deviations – e.g. in geometry or colouring – are production-related and shall not be a reason for complaints. Complaints shall be made immediately, no later than 14 days after the receipt of the goods at their destination, with any processing being ceased immediately. The goods should remain in their original packaging until they are examined by us, unless they had to be removed for the inspection of the goods. For defects which were not identifiable during the receiving inspection, the above period shall run from the time at which the defect is discovered, and no longer than 6 months from delivery. After the expiry of the above periods, the goods shall be considered approved. A sample of the goods complained of shall be submitted immediately, indicating the exact designation of the goods and – in particular – the vehicle number and the date of delivery. In the case of a justified complaint, we will take back the goods and replace them by faultless ones; instead, we may also reimburse the reduced value. The amount of our liability for damage resulting from the supply of defective goods or for incorrect deliveries, and for consequential damage, shall be limited to the purchase price of the consumed portion of the delivery complained of. No further claims, irrespective of the legal basis, shall exist.

**7. ADVICE**

Our advice – e.g. in the form of printed materials, data and information on specifications or the suitability and application of our third-party products, or information obtained through measurements, laboratory tests or processing technology experiments – shall be given to our best knowledge and according to the state of the art. However, such advice shall be without commitment and shall not release the Buyer from his own obligation to test the products for the suitability for the intended processes and purposes. This shall also apply to the situation as regards industrial property rights. Any advice or recommendation given by us or our employees shall not form the basis of any contractual relationship nor any secondary obligation under the purchase contract so that we shall not be liable in connection with such activities. Should any liability be possible nevertheless, it shall be limited to the same extent as in the case of justified complaints. If the Buyer is provided data from analyses or if the submitted product specifications are verified on his request, such provided data and/or information concerning the result of the verification shall not constitute any guarantee concerning the characteristics of the product. Instead, the above paragraph shall apply accordingly.

**8. PERFORMANCE AND PLACE OF JURISDICTION**

The place of performance for delivery and payment shall be Engelskirchen. In the case of fully qualified merchants, the place of jurisdiction for all disputes arising from this Contract, except order for payment procedures, shall be Gummersbach. However, we may also enforce our claims at the Buyer's place of general jurisdiction. All legal relationships shall be governed by German law.

**9.** Should any provision of these General Terms and Conditions be in violation of mandatory law, the legal effectiveness of the other provisions shall remain unaffected

**EUROKARTUSCHEN e.K.**

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