

**STANDARD**  
**SALES AND DELIVERY TERMS**  
**of Elekonta Marek GmbH & Co. KG**

(Valid from 01/2016)

**1. Scope of application**

Our standard business terms only apply to entrepreneurs (§ 14 German Civil Code [BGB]), legal persons under public law or special funds under public law. These standard business terms apply exclusively to all supplies of goods and services including deliveries made in the future. Unless we have expressly acknowledged them, business terms of the buyer that vary from or supplement these standard business terms are not binding upon us even if we do not object in any specific case. In such cases, they are only applicable to the respective individual contract.

**2. Contract formation**

- 2.1. Our offers are non-binding in all cases. The buyer is bound by its offer for three weeks from the date of receipt by us.
- 2.2. Orders as well as changes to orders have not been accepted until we have confirmed them. The receipt of a delivery note or invoice by the buyer and/or completing the delivery or performance on our part, are deemed to comprise confirmation.
- 2.3. The buyer is solely responsible for reviewing its order and all contract documents for completeness, correctness and suitability for the use intended by the buyer.
- 2.4. Conclusion of a contract is subject to the provision that we receive timely supply from our vendors. The foregoing does not apply in the event that we are responsible for such a non-supply, in particular if we have not concluded a congruent covering transaction. We will inform the buyer immediately in the event goods are not available and will immediately refund any payments that have already been made.
- 2.5. In the case of call-off contracts, we agree to a delivery quantity with the buyer which the buyer is required to call-off during the agreed term. We must receive call-off requests six weeks prior to the start of the respective month of delivery at the latest.

**3. Prices; Terms of payment**

- 3.1. Our prices are based on the price list in effect on the day on which the respective contract is concluded plus statutory value added tax and are stated ex works without packaging and transport expenses. Incidental expenses will be invoiced upon submission of supporting documents.
- 3.2. In the event prices are based on our list prices, we are authorized to increase prices in the event delivery is intended to be made more than four months after the conclusion of the contract or may be made after

such time on grounds for which the buyer is at fault. We are likewise authorized to increase prices if, following conclusion of the contract, our costs - in particular material costs, collectively-bargained wages, statutory and collectively-bargained social benefits and freight charges should increase - and the delivery is intended to be made more than one month after the conclusion of the contract or may be made after such time on grounds for which the buyer is at fault.

- 3.3. Our invoices are immediately due for payment and must be paid within 14 days in euros without deduction.
- 3.4. We reserve the right to accept bills of exchange and cheques at our discretion. In all cases, acceptance is on account of payment and subject to all costs and expenses and without warranty for timely presentation and protest.
- 3.5. The buyer is only entitled to a right of set-off if its counter-claim has been finally determined by a court or is undisputed. The foregoing limitation on the right of set-off does not apply to claims based on a deficiency that is based on the same contract as our claim. The buyer is only entitled to assert a right of retention to the extent its counter-claim is based on the same contract.

#### **4. Delivery; Passage of risk**

- 4.1. Information regarding delivery dates and deadlines is non-binding unless a delivery date or deadline has been expressly agreed in a specific case.
- 4.2. We are entitled to make partial deliveries to the extent that may be reasonably acceptable to the buyer. Each partial delivery will be separately invoiced.
- 4.3. Excess or short deliveries of up to 10% are permissible to the extent customary in the industry.
- 4.4. To the extent not otherwise agreed, our deliveries are made EX WORKS - EXW - our place of business (Incoterms 2010). In the event shipment of goods has been agreed, the risk of accidental loss or accidental deterioration of the goods passes to the buyer upon dispatch and at the latest upon departure from our plant or warehouse. The foregoing applies even in the event we undertake delivery, have assumed the costs of shipment or perform installation or commissioning. Absent written instruction from the buyer, we will select the shipment type, route and packing at our discretion. We will only purchase transport insurance at the request and in the name of the buyer.
- 4.5. The buyer is required to inspect the goods for transportation damage upon receipt. The buyer is to immediately inform the carrier of transportation damage and have such damage noted on the bill of lading, shipping order or delivery note. The buyer is likewise required to inform us of transportation damage by means of a damage report.
- 4.6. The buyer is required to satisfy the common commercial duties of immediate inspection of the goods and immediate notification of defects (§ 377 German Commercial Code - [HGB]) within seven business days at the latest.

- 4.7. Should shipment be delayed due to circumstances for which the buyer is at fault, risk passes to the buyer on the day on which the goods are ready for dispatch. In such cases, we are authorized to store the goods at our discretion and at the expense and risk of the buyer and to demand payment of the agreed price.
- 4.8. With the exception of pallets, transport and all other packaging within the meaning of the German Packaging Regulation [Verpackungsverordnung] will not be accepted for return and must be disposed of by the buyer at its own expense.

## **5. Reservation of title; Security interests**

- 5.1. We reserve title to our goods ("goods subject to retained title") until the complete payment of all claims - including future claims - arising under the overall business relationship as well as all ancillary claims. In the case of open accounts, the reservation of title is deemed to be security for the claim to the open balance.
- 5.2. The buyer is authorized to sell goods subject to retained title in the ordinary course of business. The customer hereby assigns to us with prospective effect all claims to which it is entitled from the sale of such goods including all ancillary rights We accept such assignment.
- 5.3. The reservation of title extends to the products created by processing, mixing or combining the goods at their full value in which case we are considered the manufacturer. If the right of ownership by third parties remains in force when the goods are processed, mixed or combined with third-party goods, we acquire joint ownership in the processed, mixed or combined goods in proportion to their invoice value. In all other respects, the provisions applicable to goods subject to retained title apply to the resulting product as well.
- 5.4. The buyer may not pledge or grant any security interests in goods subject to retained title. The buyer is required to inform us in writing of any third-party attempts to assert rights against goods subject to retained title, in particular attempts at seizure. The buyer is obliged to object to any such attempts and must refer to our rights.
- 5.5. In the event of a default in payment, we are authorized to revoke the contract as provided by law and demand immediate return of the goods.
- 5.6. We undertake to release goods subject to retained title and assigned receivables to the extent that the realisable value of such collateral exceeds 110% of the secured receivables. Such a release will be made via transfer of ownership or re-assignment as applicable.
- 5.7. The buyer bears the expense of the return and sale of goods subject to retained title. Such expenses are deemed to equal 5% of the sales proceeds including value added tax unless we provide proof of higher costs or the buyer provides proof that either no costs or lower costs were incurred.

## **6. Rights in the event of a defect**

- 6.1. In the event of defects, we will either repair the defect or provide a replacement (cure). If attempts at cure fail, are unreasonable or refused by us, the buyer may reduce the price or - in the case of defects that are fundamental - revoke the contract and/or demand compensation for damages subject to the limitations set out in section 7.
- 6.2. Goods are free of defects if they conform to the agreed characteristics. The agreed characteristics are as provided in our order confirmation.
- 6.3. We will only assume expenses related to cure incurred due to the circumstance that sold goods have been brought to a location other than the agreed place of performance in the event this has been contractually agreed.
- 6.4. The buyer may not assign claims for defects.
- 6.5. Claims for recourse by the buyer against us under § 478 BGB (Recourse of the entrepreneur) are only permissible to the extent the buyer has not made agreements with its respective customer that exceed statutory warranty liability for defects.

## **7. Liability for damages and reimbursement of expenses**

- 7.1. Our liability for compensation for damages and reimbursement of expenses related to simple negligence is excluded, in particular if based on a breach of duties under the contractual relationship and in tort, unless we have breached a material contractual obligation, i.e. an obligation the satisfaction of which enables the proper performance of the contract in the first place or an obligation the performance of which the buyer may regularly be entitled to expect. In such cases, our liability is limited to damages typical to the contract, the occurrence of which may reasonably be expected upon conclusion of the contract based on our knowledge of the circumstances at the time. However, our liability is unlimited for damages related to the injury of life, limb or health, for cases of intent or gross negligence, for the absence of a guaranteed characteristic and for damages under the German Product Liability Act [Produkthaftungsgesetz].

## **8. Limitations period for warranty claims and claims to compensation**

- 8.1. Claims on the part of the buyer due to defects lapse after one year in accordance with applicable law. Similarly, the limitations period for claims on the part of the buyer to compensation for damages and reimbursement of expenses that are not related to defects is one year.
- 8.2. However, the shortened limitation periods provided for in section 8.1 do not apply to claims on the part of the buyer related to injury to life, limb or health or to claims related to an intentional or grossly negligent breach of duty.

**9. Final provisions**

- 9.1. In the event the buyer is a merchant, the place of jurisdiction for all disputes arising under or in connection with the contract shall be the location of our registered office; otherwise we may select the location of the customer's registered office at our discretion.
- 9.2. This agreement is governed by German law.
- 9.3. In the event a provision of these terms and conditions is or becomes invalid, the remaining provisions shall remain in full force and effect.

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