

General Terms and Conditions of Sale of emuco Ernst Müller und Co.OHG

1. General

1.1 Our terms and conditions of sale apply to entrepreneurs in terms of section 14 of the German Civil Code, legal entities under public law and special funds under public law.

1.2 Our terms and conditions apply exclusively; we do not recognize terms and conditions of purchaser in conflict with or deviation from our terms and conditions of sale, unless we have expressly approved them in writing. Objection to deviating terms and conditions of purchaser is not required. Our terms and conditions of sale also apply if we have delivered without reservation while being aware of terms and conditions of purchaser in conflict with or deviating from our terms and conditions of sale. Our terms and conditions of sale also apply to all future business relations, even if they are not expressly agreed again. They especially apply to contracts on the sale and/or the delivery of movables, irrespective of whether we produce the goods ourselves or purchase them from sub-suppliers.

2. Purchase orders / Conclusion of contract

2.1 Our offers are subject to confirmation. Our written order confirmation, actual delivery or charging is relevant for the scope of delivery.

2.2 Unless otherwise clearly stated in the purchase order, it is a binding offer in terms of section 145 of the German Civil Code. We can accept this offer at our option within two weeks. This acceptance may be made either by sending an order confirmation or by delivering the ordered goods within this period of time.

3. Payments

3.1 Our invoices are due for payment within 30 days after the invoice date and the delivery and/or acceptance of the goods. As from the 31st day, due date interest of 8% p.a. is payable. The assertion of further damage (section 288 IV of the German Civil Code) remains unaffected.

3.2 Bills of exchange are only accepted in exceptional cases and upon prior arrangement. We do not assume any guarantee for timely presentation and protesting. All costs accruing due to the discounting of bills of exchange are borne by purchaser. Bills of exchange as well as cheques are only deemed to be payments after their irrevocable cashing.

3.3 If doubts regarding purchaser's liquidity arise or if the payment period is exceeded, we are entitled to demand advance payment and to revoke granted payment periods.

3.4 Set-off against our receivables can only be made if we have acknowledged the counterclaim or if a corresponding final and binding court decision has been made.

4. Delivery

4.1 Delivery time and deadlines are only binding upon our express confirmation.

The start of the delivery time requires the clarification of all technical issues as well as the proper fulfilment of purchaser's duties.

Agreed delivery deadlines refer to the shipping date of the goods. When the delivery time is exceeded, purchaser is only entitled to rescission of the contract after they have granted us a grace period of at least 15 working days (excluding Saturdays) in accordance with section 323 of the German Civil Code. The right based on section 324 of the German Civil Code remains unaffected.

4.2 Our liability for non-performance or delay in delivery is limited to the invoice value of the quantity of goods we have not delivered or the delivery of which is delayed. Furthermore, liability due to delay in delivery requires that this delay is based on intentional or grossly negligent breach of contract we are responsible for. As far as the delay in delivery, we are insofar responsible for is based on culpable violation of an essential contractual obligation, our liability is limited to the foreseeable damage typical for this type of contract.

4.3 We are entitled to partial deliveries, unless the partial delivery is objectively of no interest for purchaser or not reasonable for them.

4.4 Our duty to deliver is suspended as long as purchaser is in arrears with a due payment.

4.5 A claim for subsequent delivery of such quantities with which call or acceptance purchaser is in arrears for than 7 days after delivery cannot be made. The same applies to quantities we have not delivered due to outstanding payments by purchaser. This does not affect any other rights we might have.

4.6 If the goods have to be delivered within a certain period of time, the calls are to be distributed evenly over this entire period of time, unless otherwise expressly agreed.

5. Shipping

5.1 Mode of shipping and transport route are determined by us. We will try to consider purchaser's wishes; any associated additional costs will be paid by purchaser.

5.2 Our staff members are not allowed to load the goods into a cooling truck. In case a cooling truck is sent for picking up the goods by purchaser to collect himself, we are not liable for possible odour problems or similar. A collection of the goods with a cooling truck is at purchaser's own risk.

5.3 Transport and other packaging according to the packaging ordinance will not be taken back; this excludes Euro and reusable pallets and lattice boxes. Purchaser is obliged to provide for the disposal of the packaging at their own cost.

6. Acceptance, default of acceptance and duty to examine

6.1 If purchaser is in default of acceptance or if they culpably violate other duties to cooperate, we are entitled to claim compensation for the damage we insofar incurred including potential additional expenditure. Further claims remain reserved.

If the requirements of item 6.1 are met, the risk of accidental loss or accidental deterioration of the object of purchase is transferred to purchaser at the time they are in default of acceptance or default of the debtor.

6.2 Defects of the sold goods must be notified in writing immediately upon delivery, in case of hidden defects after their identification. Where necessary, purchaser has to check by means of a sample processing whether the delivered goods are defect-free and suitable for the intended use. The duty to examine and notify defects also applies with respect to potential patterns.

6.3 Potential objections regarding the quality or quantity must be made by indicating the order data and the invoice and shipping numbers. Obvious defects must be notified within 14 days upon receipt of the goods, hidden defects must be notified immediately after their identification, however, not later than 6 months after dispatch of the goods at the shipping point. If defects of the goods are notified, a sample of the defective goods must be provided to us for inspection of the occasion of the complaint, however, at least immediately thereafter.

6.4 If defects are not notified in due time, the goods are deemed to be accepted according to the contract. The provision of section 377 of the German Commercial Code is not affected by aforementioned regulation.

7. Warranty and liability

7.1 We will comply with notifications of defects raised and justified according to section 377 of the German Commercial Code by means of discounts, subsequent improvement, exchange or acceptance of returned goods against reimbursement of the purchase price. In this regards, purchaser has to set a reasonable deadline in consideration of the time for procurement of raw materials by supplier.

7.2 Objected goods may only be returned to us upon express consent.

7.3 Unless otherwise agreed hereinafter, further claims of purchaser due to defects are excluded. This does not apply when the defect has been maliciously concealed.

7.4 The warranty period is one year as from transfer of risk, unless claims based on intentional and/or grossly negligent actions are asserted. This period is a limitation period. It also applies to claims for compensation of consequential damage. This period also applies to contractual and non-contractual claims for damages of purchaser based on a defect of the goods. The limitation regulations of the Product Liability Act remain unaffected. The statutory provisions apply for the limitation of other claims for damages.

7.5 Further liability in case of breach of contractual and non-contractual duties is in accordance with the relevant statutory provisions. We are only liable to pay damages in case of intention or gross negligence, irrespective of the legal grounds. In case of ordinary negligence, we are only liable for damages resulting from injury to life, body or health as well as for damages resulting from the breach of an essential contractual duty (obligation which fulfilment makes the proper performance of the contract possible in the first place and on which fulfilment the contractual partner regularly relies on and may regularly rely on); in this case our liability is however limited to the foreseeable damage

typical for this type of contract. The limitations of liability do not apply if a defect has been maliciously concealed.

Insofar as our liability for compensation is excluded or limited, this also applies with respect to the personal liability for compensation on part of our employees, representatives and vicarious agents.

8. Information and advice

Information about processing and application possibilities of our products, technical advice and other information are provided according to the best of our knowledge, but are non-committal and with exclusion of any liability.

9. Reservation of ownership

9.1 We reserve the ownership of the delivered goods in order to secure all claims we are entitled to against purchaser based on the present and future business relationship until all balances are settled. If cheques are presented, the goods remain our property until they are cashed.

9.2 Our ownership includes the new products resulting from the processing of the reserved goods. In case of processing, compounding or mixing of items not belonging to us, we acquire co-ownership according to sections 947, 948 of the German Civil Code. Purchaser is not entitled to any claims against us from the processing of the reserved goods for us and their storage.

9.3 Purchaser assigns to us already now all receivables from the sale of reserved goods from our present and future deliveries of goods to them, including bills of exchange and cheques, in order to secure the respective claims according to 9.1. For the sale of goods we co-own according to 9.2 sentence 2, the assignment is restricted to the share of the receivables that correspond to our co-ownership share. If reserved goods are sold jointly with other items at an overall price, the assignment is restricted to the pro rata amount of our invoice (including value-added tax) for the reserved goods included in the sale. In case of processing in line with a contract for work and services, the compensation guarantee for work performed and materials provided in the amount of the pro rata sum of our invoice (including value-added tax) for reserved goods so processed is assigned to us already now.

9.4 As long as purchaser is willing and able to duly fulfil their obligations to us, they may dispose of the goods in our ownership in the proper course of business and collect the receivables assigned to us themselves. They may carry out transfers by way of security, pledges and assignments of claims, including by way of sale of accounts receivable, only upon our prior written consent; this also applies to export businesses. Purchaser must immediately inform us in writing if an as far as third parties access the goods in our possession. If purchaser acts contrary to the contract, especially if they fail to pay the purchase price due, purchaser must inform us about the inventory of the reserved goods on our demand and enable us to take them back; furthermore, they must inform their customers about the assignment and provide us with all necessary information and documents. The taking back of reserved goods only constitutes a rescission of the contract if we expressly declare this in writing. If purchaser fails to pay the purchase price due, we may only assert these rights if we have previously set a reasonable grace period for payment or if such period is unnecessary according to the statutory provisions.

10. Force majeure

Operational disruptions, late deliveries or failures to deliver on part of our suppliers, shortage of raw materials, energy or labour, strikes, lock-outs, problems with procurement of means of transport, traffic disruptions, instructions by higher authorities and cases of force majeure release the affected party from the obligation to deliver and/or accept for the duration of the disruption and to the extent of its effect. If this delays the delivery by more than 1 month, the purchaser is entitled, if this delays the acceptance by more than 1 month, we are entitled to rescind the contract with respect to the quantity affected by the disruption in delivery and/or acceptance. There are no other claims applicable.

11. Place of performance, choice of law and place of jurisdiction

12.1 Place of performance for the delivery is our respective place of dispatch, for the payment it is Köln.

12.2 If purchaser is an entrepreneur, the place of jurisdiction is Köln or, if we file a lawsuit, also the general place of jurisdiction of purchaser.

12.3 The law of the Federal Republic of Germany excluding international uniform laws, especially the United Nations Convention on Contracts for the international Sale of Goods, applies to these terms and conditions and all legal relations between us and purchaser.