

Standard Business Conditions of EFS GmbH & Co. KG

1. Scope of Contract

- 1.1 These standard business conditions only apply to companies as defined according to § 14 BGB
- 1.2 All of our deliveries and services are exclusively conducted on the basis of these standard business conditions. We refuse to accept contradictory or diverting conditions on part of the customer, unless we have explicitly recognized their validity.
- 1.3 Our standard business conditions also apply to future transactions, even if we occasionally do not refer to them.

2. Quotation and Conclusion of Contract

- 2.1 Our quotations are provisional and non-binding, unless they have been explicitly marked as binding quotation, and they are valid for 12 months.
- 2.2 Decisive for the order is our written confirmation of order. Should the customer have any objections to the contents of the confirmation of order, an immediate protest must be lodged. Otherwise the contract will be concluded in accordance with the confirmation of order.
- 2.3 When the order is executed immediately without delay, the invoice respectively the delivery note serve as confirmation of order.
- 2.4 Samples, illustrations, weights, dimensions and colour specifications are only approximate, provided binding indications have not been explicitly agreed upon.

3. Prices

The prices mentioned in the confirmation of order are decisive. They do not include the legal Value Added Tax. From a value of goods of 300.-- Euro the delivery is free, packing included. For deliveries below a value of goods of 300.-- Euro we charge a flat rate of 5.-- Euro for packing, carriage, etc. For deliveries abroad, the shipment will be sent ex works.

4. Payment

- 4.1 Our invoices are to be paid to our account within a fortnight from the date of invoice with 2% cash discount or within 30 days after date of invoice without discount.
- 4.2 Bills of exchange and cheques will only be accepted as means of payment upon explicit agreement. Discount expenses and any other costs are to be borne by the customer.

5. Compensation and Retention

The customer may only demand compensation for an undisputed or legally assessed counter demand. The assertion of a right of retention is only permitted to the customer, if it is based on the same contractual relationship.

6. Delivery

- 6.1 The delivery deadlines stipulated by us are non-binding, unless a binding agreement was entered. The delivery period starts with the confirmation of order, however, not until the customer has supplied necessary documents and information on technical details, permits, releases and possibly agreed down payments.
- 6.2 We will not be held responsible for delays in delivery and in service due to force majeure or due to unforeseeable events or events through no fault of our own that make the fulfilment of the delivery or of the service distinctly more difficult or even impossible, even if binding periods of time and deadlines have been agreed upon. Such events entitle us to extend the time for the delivery or the service by the duration of the impediment not including an adequate period of preparation. Should the impediment last longer than three months, the customer is entitled after having granted an appropriate additional respite to withdraw from the contract. Claims for damage by the customer are in this case not permitted.
- 6.3 Should our delivery be delayed due to gross negligence on our part, we can be held liable for the damage caused by the delay. In case of slight negligence on our part, our liability for proven damage caused by the delay is limited to a compensation for every completed week of the delay of 0.5% each, in total, however, no more than 5% at the maximum of the price for that part of the shipment that could not be used purposefully due to the delay.

7. Passing of Risk / Shipment

- 7.1 The customer is to bear the costs and the risks for the shipment and transportation of the goods. The risk is passed on to the customer as soon as the goods have left our works. This also applies, if delivery carriage free has exceptionally been agreed.
- 7.2 If the shipment is delayed due to circumstances for which the customer is responsible, the risk is to be borne by the customer from the day the goods are ready for shipment.
- 7.3 Should we choose the shipping method, the route or the shipping agent, we will only be held liable for a gross negligence regarding the respective choice.

8. Complaint

- 8.1 On acceptance or receipt of the shipment, the customer must check each shipment for completeness and damage of the packing. Complaints must be lodged with us immediately and in writing. The shipping agent must be asked to provide a finding of the facts.
- 8.2 The customer is obliged to immediately examine the goods and to immediately place written claims for obvious faults. Hidden faults must be claimed in writing immediately upon their discovery. Otherwise the shipment is regarded as approved.

9. Warranty Claims

- 9.1 Provided the goods are subject to a defect we have to answer for, we have the right of subsequent performance by correcting the fault according to our own choice or by delivering an object free from defects. If we refuse the subsequent performance or if it has failed or is unacceptable for the customer, he can assert further legal rights. A slight reduction of the value or of the suitability is out of the question. The rules mentioned in section no. 10 apply to claims for damages due to defects.

- 9.2 Warranty claims of the customer become statute-barred 12 months after the object has been delivered. The statutory periods of limitation however apply to objects, that have been used for a building in accordance with their usual field of application, in case of fraudulent concealment of a defect and in case of recourse of the entrepreneur.
- 9.3 The customer has no rights for warranty claims, if the objects supplied by us show signs of wear and tear as a result of their destined application.

10. Restriction of Liability / Compensatory Damages

- 10.1 We are held responsible for intent and gross negligence. For slight negligence we will only be held responsible in case of breach of essential contractual obligations that result from the nature of the contract or the breaching of which endanger the contractual purpose from being achieved. Apart from this, the customer has no right to place any claims for damages in case of slight negligence, no matter of the legal argument.
- 10.2 The limitation of liability mentioned above does not apply to claims resulting from the product liability law, in case of injury to life, body or health of a person. For claims for damage due to material defects the limitation of liability additionally does not apply, if we have fraudulently concealed a defect or if we have given a guarantee.
- 10.3 Claims for damage in conjunction with material defects become statute-barred 12 months after delivery of the object. The statutory period of limitation applies to the various cases mentioned in paragraph 9.2, for intent, for gross negligence, for culpable injury of life, body or health of a person as well as for claims resulting from the product liability law.

11. Reservation of Proprietary Rights

- 11.1 We reserve the proprietary right on all goods delivered by us until all active debts from previous contracts have been completely settled. Cheques and bills of exchange as well as due invoices are also considered active debts. If, in conjunction with the payment, we are held liable for a bill of exchange, the reservation of proprietary rights only ceases once the claims resulting from the bill of exchange can no longer be filed against us.
- 11.2 If the customer defaults on his payments or if it becomes obvious that our demands for payments are endangered due to inadequate competitiveness of the customer, we are entitled to demand the goods back even without fixing a time limit on the basis of the reservation of proprietary rights according to § 321 BGB.
- 11.3 In case of distraint or other interventions of third parties the customer is obliged to immediately inform us. The customer bears all costs that are necessary to revoke this action and to recover the delivered object, in as far as it cannot be confiscated by the third party.
- 11.4 The customer is entitled, subject to a permissible revocation due to important reasons, to make use of the delivered object within the scope of an ordinary course of business. Especially collateral assignment and distraint are not permissible. The goods subject to reservation of proprietary rights may only be passed on to the purchaser by the customer, if the customer is not in arrears with his liabilities towards us.
In case of a resale, the customer already now transfers all claims to the amount of out invoice total (incl. VAT) from the resale to us, especially requests for payment but also other claims arising in conjunction with the sale, independent of whether the delivered object has been resold without or after processing.
Provided there has not been a permissible revocation by us due to important reasons, the customer is entitled to collect the assigned claims in trust. The resale of the claims in the scope of a true factoring requires our prior approval. For important reasons, we are entitled to make the assignment of the claim known to the third-party debtor, also on behalf of the customer. The customer's collection authorization expires, once the assignment to the third-party debtor has been announced. Should the collection authorization be revoked, we are entitled to ask the customer to name the assigned claims and the debtor, to pass on all information necessary for the collection, to hand out the respective documents and to inform the debtors of the assignment.
Important reasons as defined by these rules are especially given in case of delay of payment, suspension of payment, commencement of insolvency proceedings, protest of a bill of exchange or justified indication of over-indebtedness or impending insolvency of the customer.
- 11.5 Treatment and processing of the delivered object by the customer is always performed for us. We are considered a manufacturer as defined by §950 BGB without further obligations. If the supplied object is processed with materials not belonging to us, we acquire the co-ownership for the new object in the ratio of the value of the invoice amount at the cost price of the other processed articles. The same regulations apply to the object resulting from the processing as to the delivered object.
- 11.6 We commit ourselves to release the given securities upon request of the customer in as far as the realizable value of our securities exceeds the payments to be assured by more than 10%.

12. Acceptance

- 12.1 Provided we manufacture goods according to the customer's specifications, an acceptance must take place. The person accepting the goods in the name of the customer is entitled to make the for the acceptance necessary binding statements on behalf of the customer.
- 12.2 If a customer does not observe the date agreed on for the acceptance or if he refuses to attend a common acceptance date or to even agree on a common acceptance date, the goods are considered accepted 12 working days after notification of the readiness for shipment.
- 12.3 The acceptance can only be refused by the customer due to substantial faults and until these have been eliminated. Should faults be noticed during the acceptance, they will be recorded in a list of defects. Other defects can only be asserted within the guarantee period, if it was not possible to detect them during the acceptance.

13. Place of Performance, Jurisdiction, Applicable Law

- 13.1 The place of performance for delivery and payment for both parties is only Wurmberg.
- 13.2 The jurisdiction for all litigation resulting from the contractual relationship as well as from its formation and its effect is for businessmen of both parties the court within the jurisdiction of which our company comes. However, it is also possible for us to file a suit at the customer's headquarters.
- 13.3 The contractual relationship is subject to the German Law only.