

GENERAL TERMS AND CONDITIONS of ESBIT Compagnie GmbH

1. Scope and general information

(1) These General Terms and Conditions apply exclusively to companies within the meaning of Section 310(1) of the German Civil Code (BGB) and to legal entities under public law or special funds under public law. We shall only acknowledge conditions of the customer that are contrary to or deviating from these General Terms and Conditions after an explicit written declaration.

(2) These General Terms and Conditions shall also apply to all future transactions with the customer, insofar as legal transactions of a related nature are involved.

(3) Individual agreements made with the customer in individual cases (including side agreements, supplements and amendments) shall in any case take precedence over these General Terms and Conditions. A contract in text form or our confirmation in text form shall be decisive for the content of such agreements, subject to proof to the contrary.

2. Offer and conclusion of contract

(1) Our offers are not binding. Orders shall only become binding for us when and insofar as we have expressly confirmed them or have begun to execute them. The same applies to changes, additions and verbal side agreements.

(2) If an order is to be qualified as an offer within the meaning of Section 145 BGB, we can accept it within two weeks.

(3) We reserve the property rights and copyrights to all documents provided to the customer in connection with the placement of the order – including in electronic form – such as calculations, drawings, etc. These documents may not be made available to third parties unless we give the customer our express consent in text form. Insofar as we do not accept the customer's offer within the period specified in Section 2(2), these documents must be returned to us without delay.

3. Prices and payment

(1) Unless otherwise agreed, our prices are stated ex works/warehouse excluding packaging and the applicable value added tax. Costs for packaging shall be invoiced separately.

(2) Payment of the purchase price shall be made exclusively to the account specified by us on the invoice. The deduction of a discount is only permissible given a special written agreement.

(3) Unless otherwise agreed, the purchase price is due within 10 days after delivery. After expiry of this payment period, the customer shall automatically be in default and the statutory arrears interest shall be charged. We reserve the right to assert higher damages caused by default.

(4) Any confirmed alternative payment term shall only be granted under the condition of a 100% cover note of the credit insurer Euler Hermes valid at the time of delivery.

(5) We reserve the right to make reasonable price changes due to increased customs duties, changed wages, material and distribution costs for deliveries which take place four months or more after conclusion of the contract.

4. Set-off and right of retention

The customer is only entitled to offsetting if its counterclaims have been legally established or are undisputed. The customer is only entitled to exercise a right of retention insofar as its counterclaim is based on the same contractual relationship.

5. Delivery period

(1) The beginning of the delivery period stated by us is to be understood as an approximate indication and presupposes the clarification of all technical questions and the timely and proper fulfilment of the customer's obligations. We reserve the right to the defence of non-performance of the contract.

(2) If the customer is in default of acceptance or if it culpably violates other obligations to cooperate, we are entitled to demand compensation for the damage incurred by us in this respect, including any additional expenses. We reserve the right to make further claims. Insofar as these conditions are met, the risk of accidental loss or accidental deterioration of the purchased item shall pass to the customer at the point in time at which the customer is in default of acceptance or debtor's delay.

(3) In the event of a delay in delivery, we shall be liable for each completed week of delay within the scope of a lump-sum compensation for delay in the amount of 0.5% of the delivery value, but not more than 7.5% of the delivery value. Further legal claims and rights of the customer during a delay in delivery remain unaffected.

6. Transfer of risk on dispatch

If the goods are sent to the customer at its request, the risk of accidental loss or accidental deterioration of the goods shall pass to the customer on dispatch to it, at the latest on leaving the factory/warehouse. This applies irrespective of whether the goods are dispatched from the place of performance or who bears the freight costs and/or transport insurance.

7. Reusable packaging

If our deliveries are made in rented containers, these must be returned to us by the customer at the latest within four weeks of arrival at the customer's premises in an empty, faultless condition at the customer's expense and risk or, if necessary, returned free to our vehicle against confirmation of receipt. If the customer does not fulfil this obligation in due time, it shall owe us an appropriate remuneration and we are entitled to demand the replacement price after expiry of a period of grace to be set.

8. Retention of title

(1) We reserve title to the delivery item until all claims arising from the delivery contract have been paid in full. This also applies to all future deliveries, even if we do not always expressly refer to this. We are entitled to take back the object of purchase if the customer behaves contrary to the contract.

(2) As long as the ownership has not yet been transferred, the customer must inform us immediately in writing if the delivered item is seized or exposed to other interventions by third parties. Insofar as the third party is not in a position to reimburse us for the judicial and extrajudicial costs of a lawsuit under Section 771 of the Code of Civil Procedure (ZPO), the customer shall be liable for the loss incurred by us.

(3) The customer is entitled to resell the reserved goods in the normal course of business. The contractual partner hereby assigns to us the claims of the customer from the resale of the reserved goods in the amount of the final invoice amount agreed with us (including value added tax, if applicable). This assignment shall apply irrespective of whether the purchased goods have been resold without or after processing. The customer remains entitled to collect this claim even after the assignment. Our authority to collect the claim ourselves remains unaffected by this. However, we shall not collect the claim as long as the customer meets its payment obligations from the proceeds received, is not in default of payment and in particular no application for the initiation of insolvency proceedings has been filed or payments have been suspended.

(4) The treatment and processing or transformation of the object of purchase by the customer shall always be carried out in our name and on our behalf. In this case, the expectant right of the purchaser to the object of purchase shall continue to apply to the transformed object. If the object of purchase is processed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the objective value of our object of sale to the other processed objects at the time of processing. The same applies accordingly in the case of mixing. If the mixing is carried out in such a way that the customer's item is to be regarded as the main item, it is deemed to be agreed that the customer transfers proportional co-ownership to us and keeps the sole ownership or co-ownership thus created for us.

(5) We undertake to release the securities to which we are entitled at the request of the purchaser if their value exceeds the claims to be secured by more than 20%.

9. Warranty and notice of defects

(1) The customer's warranty rights require that it has properly fulfilled its obligations to inspect and complain in accordance with Section 377 of the German Commercial Code (HGB). Obvious defects are to be notified immediately on receipt of the goods, hidden defects immediately on their discovery, otherwise the goods are deemed to be approved.

(2) Warranty claims shall expire twelve months after delivery of the goods supplied by us to the customer. The statutory period of limitation shall apply to claims for damages in cases of intent and gross negligence as well as in cases of injury to life, limb and health based on an intentional or negligent breach of duty. Our consent must be obtained before any return of the goods.

(3) Should the delivered goods, in spite of all due care, have a defect which already existed at the time of the transfer of risk, we shall, subject to proper notification of defects, at our discretion either repair the defect or supply replacement goods. In any case, we shall be given the opportunity for subsequent performance within a reasonable period. Recourse claims remain unaffected by the above provision without restriction.

(4) Claims of the customer for expenses incurred for the purpose of subsequent performance, in particular transport, travel, labour and material costs, are excluded if the expenses increase because the goods delivered by us have subsequently been taken to a place other than the purchaser's branch office, unless the transfer corresponds to their intended use.

(5) Warranty claims shall not exist in the event of an insignificant deviation from the agreed quality and/or insignificant impairment of usability (e.g. due to colour, odour and/or consistency), in the event of natural wear and tear as well as in the event of damage which occurs after the transfer of risk as a result of incorrect or negligent handling, excessive strain, unsuitable operating materials or due to special external influences which are not provided for under the contract. If the customer or third parties carry out improper repair work or modifications to the goods, no claims for defects shall exist for these and the resulting consequences.

(6) The customer's rights of recourse against us shall exist only insofar as the customer has not made any agreements with its customers that go beyond the legally binding claims for defects. In addition, paragraph (4) shall apply accordingly to the scope of the customer's right of recourse against the supplier.

(7) In the event of fraudulent concealment of a defect or the assumption of a guarantee for the quality of the goods at the time of transfer of risk within the meaning of Section 444 BGB, the rights of the customer shall be governed exclusively by the statutory provisions.

10. Miscellaneous

(1) This contract and the entire legal relations between the parties shall be governed by the law of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).

(2) The place of performance and exclusive jurisdiction for all disputes arising from the underlying contractual relationship shall be the Hamburg Regional Court, unless otherwise stated in the order/contract confirmation.

(3) Changes and amendments to this contract must be made in text form. No verbal side agreements have been reached.

(4) In the event of any discrepancy regarding the content or interpretation of these terms and conditions, the German original text shall take precedence over the English translation.