

General Terms and Conditions of Sale valid from 01.10.2021

§ 1 General – Scope

- (1) Only our terms and conditions of sale apply; customers' terms and conditions which differ from them do not apply unless we have agreed to them in writing. Our terms and conditions of sale apply even if we perform delivery without reservation and are aware of other terms and conditions made by the customer.
- (2) All additions and amendments to this contract must be made in writing.
- (3) Our terms and conditions of sale apply only to companies within the meaning of Article 14 German Commercial Code, namely, customers operating commercially or in any other way independently. They also apply to all future business conducted with the customer.

§ 2 Quotations and conclusion of contract

- (1) Our quotations are non-binding. Contracts will not be effective until we have confirmed orders in writing or delivered the goods. If the order confirmation differs from the order, the customer shall notify us in writing not later than one week after receipt, otherwise only the content of our order confirmation shall apply.
- (2) We may accept orders during a period of four weeks, during which the customer may not rescind.

§ 3 Prices – Terms and conditions of payment

- (1) Unless otherwise specified in the order confirmation, our prices shall apply EXW D- 31629 Estorf (Incoterms 2010), not including packing; this will be charged for separately. We reserve the right to raise our prices by a reasonable amount if after conclusion of the contract costs rise as a result of wage contracts or rises in the prices of materials. On request we shall provide the customer with the necessary proof.
- (2) Our prices do not include value-added tax; it will be shown separately on the invoice at the rate applying at the date at which the invoice is made out.
- (3) Unless otherwise specified in the order confirmation, the purchase price shall be paid without deduction not later than four weeks after receipt of the goods, otherwise the customer shall automatically be in delay. We shall allow a 2 % discount on payments which reach us not later than twelve days after the date of the invoice. Any other terms and conditions of payment must be agreed in writing.
- (4) The customer may set off payments only if his counterclaims have been shown to be legally effective or have been acknowledged by us. He may also withhold payment only in so far as his counterclaim is based on the same contractual relationship.

§ 4 Transfer of risk

- (1) Unless otherwise specified in the order confirmation, it is agreed that delivery will be made "EXW D- 31629 Estorf (Incoterms 2010)". The risk shall pass to the purchaser on dispatch of the goods, even if we are bearing the costs of dispatch.
- (2) We shall insure the delivery for transport at the customer's cost only if expressly requested to do so by the customer.

§ 5 Delivery and delivery date

- (1) Unless otherwise agreed, delivery periods shall begin to run at the date of our order confirmation, but not before the customer has performed his contractual duties. Our delivery obligation shall be held in abeyance for so long as the purchaser is in delay with his duties under the contract, in particular, the making of an agreed initial payment. The delivery period has been adhered to if by the time of its expiry the goods have left the warehouse or notice has been given of readiness for dispatch.
- (2) We may make part-deliveries and deviate from quantities by no more than 10 %. In such cases only the quantity actually delivered will be charged for.
- (3) Additional delivery periods must be fixed for us in writing and must be reasonable. They are always reasonable if they are periods of less than four weeks from the time at which notice of the additional period fixed is received. If the additional period has expired without result, the customer may withdraw from the contract only if, when fixing the additional period, he has stated in writing that he will do so.
- (4) If the customer delays taking delivery or breaches any other of his duties, we may demand damages for loss sustained by us, including any additional expenditure. In such cases the risk of accidental loss or accidental deterioration of the purchased goods shall pass to the customer at the time at which the customer is in delay in taking delivery.

§ 6 Force majeure

- (1) If performance of an order is made impossible or difficult for us owing to force majeure or other exceptional circumstances or circumstances which could not be prevented, our delivery period shall be extended for the duration of the event preventing performance; the same shall apply to an additional period fixed by the customer for performance. The customer may neither withdraw from the contract nor claim damages before expiry of the extended delivery period. If the event preventing performance lasts longer than two months, both the customer and we may withdraw from the contract in so far as the contract cannot be performed. If the customer has the right under the contract or in law to withdraw from the contract without fixing an additional delivery period, this right shall remain unaffected.
- (2) Acts of force majeure are in particular war, warlike states, mobilisation, export and import bans and blockades. Other exceptional circumstances or circumstances which could not be prevented are in particular transport obstructions, disturbance of operations, delays in the delivery of raw materials, strikes, lock-outs and other industrial disputes, even if they occur at our suppliers. We shall notify the customer when such circumstances begin and end.

§ 7 Guarantee of fitness for purpose

(1) The customer's guarantee rights require the customer to duly perform his duty to examine the goods and notify any complaint as set out in Article 377 of the German Commercial Code. In particular the customer must examine the goods without delay and notify the supplier of identifiable defects not later than five days after receipt of the goods. He must notify the supplier of any other defects immediately they are identified. Each notice of defect must be made in writing and must specify the kind of goods and the defect as well as the delivery note number. In so far as defects are not duly reported, the delivered goods shall be regarded as approved with the consequence that the customer cannot assert any rights arising from the defect.

(2) The customer may not process or otherwise use goods which have been complained about or are recognisably defective. If he fails in this duty, we shall not be liable for damage arising from the processing or other use. In such cases the customer shall also bear the additional costs incurred through installation or other use in respect of subsequent performance in accordance with Paragraph 3.

(3) If the goods are defective and are not regarded as approved, the customer may demand subsequent performance, which will, at our discretion, be in the form of repair or redelivery. If the cost of subsequent performance increases because the goods have been transported to a place other than the original destination, the customer shall bear the additional costs accordingly.

(4) The customer may not refuse to take delivery of the purchased goods on the grounds of identified defects. Rather, he must allow us to identify the defect on site ourselves or through an agent. The purchased goods complained about may not be altered in any way whatsoever without our written agreement, otherwise the customer will lose all rights on grounds of the defect. At our request, the purchased goods complained about must be returned to us.

(5) The customer may not enforce any rights on the grounds of fair wear and tear and damage due to defective installation or initial operation by the customer or third parties and incorrect use or handling.

(6) The customer may enforce claims which go beyond these only if the law provides for this. Damage claims are subject also to the limitations set out in § 9 below.

(7) The customer's duty of care is not affected by the requirements of the Product Liability Law.

(8) The period of prescription for all rights arising to the customer through defects in the delivered goods is reduced to a year. This shall not apply in cases of premeditation and gross negligence and to damage claims due to injury to life and body or health.

§ 8 Liability

(1) We are liable under the law without limitation for premeditated or grossly negligent breaches of duty and for damage resulting from injury to life and body or health. We are otherwise liable only if the breached duty under the contract is of substantial importance for achieving the purpose of the contract and only to the amount of the typically average foreseeable damage.

(2) This limitation of liability applies correspondingly to damage claims other than those under the contract, particularly to claims arising from unlawful acts, with the exception of claims under the Product Liability Law, namely, also in favour of our employees, associates, representatives and agents.

§ 9 Reservation of title

(1) We reserve title to the purchased goods until all payments due under the delivery contract have been received by us. If the customer breaches the contract, in particular by delaying payment, we may take back the purchased goods. Taking back the purchased goods does not constitute withdrawal from the contract, unless we have expressly stated in writing that it does.

(2) If the goods delivered by us are worked or processed, the working or processing of the goods to which we reserve title is done for us as manufacturer as set out in Article 950 of the German Commercial Code without any obligation arising to us. If the goods to which we reserve title are processed, compounded, combined or mixed with other moveable things, we acquire title to the new thing in a ratio of the value of the goods to which we reserve title to the value of the other things at the time of processing, compounding, combining or mixing. The customer shall hold the newly produced thing for us free of charge and with the care usually exercised in ordinary business.

(3) The customer may in the ordinary course of business further dispose of the goods to which we reserve title. However, he shall assign to us all claims arising from this disposal whether or not he disposes of the goods to which we reserve title without or after processing them or whether they are compounded or not with land or with moveable things. If after processing the goods to which we reserve title are sold or are sold together with other goods not owned by us or are combined with moveable things, the customer shall assign to us the claims against his customers arising from this to the value of the goods to which title is reserved.

(4) The customer may collect assigned claims. Our right to collect assigned claims ourselves shall not be affected thereby. However, we shall not do this so long as the customer duly fulfils his payment obligations.

(5) The customer's right to dispose of, process or install the reserved goods in the usual course of business will exist only so long as the customer fulfils his payment obligations. It will also extinguish if the customer's financial circumstances substantially deteriorate, in particular in case of imminent insolvency or in case of application for or institution of insolvency proceedings against the customer's assets. In such cases the customer's right to collect claims assigned to us will also extinguish.

(6) The customer shall on request provide us with a precise list of the claims assigned to us together with the names and addresses of his customers, the amount of each claim and the invoice dates and provide us with all the information necessary for enforcing the claims assigned to us and allow us to examine these. He shall at our request also notify the debtor against whom the assigned claims exist of the assignment in writing.

(7) The customer may not pledge or transfer by way of security the goods to which we reserve title or the claims assigned to us. If the goods to which we reserve title or the claims assigned to us are distrained upon or confiscated, the customer shall immediately notify us and make known to us the identity of the distraining creditor.

(8) In so far as we have agreed with the customer payment of the purchase price by cheque or bill of exchange, reservation of title shall apply until final receipt of the invoiced amount or payment of the bill of exchange. If payment is made by the cheque-bill of exchange method or by another method by which – although we are not obliged to do so – we as drawer or endorser sign a bill of exchange accepted by the customer for discounting purposes, title shall pass at the earliest when the customer has paid all bills of exchange and fully indemnified us against any liability arising in respect of the bill of exchange.

§ 10 Tools

Tools which are either wholly or partly paid for by the customer shall remain our unrestricted property. We are not liable to hand over the tools or refund the paid amount after performance of the order or termination of the business relationship.

§ 11 Place of jurisdiction, place of performance and law applying

(1) The place of performance for all present and future claims arising from the business relationship is Estorf-Leeseringen. If the customer is a merchant (German: Kaufmann), the place of jurisdiction for all claims arising from the contractual relationship is likewise Estorf-Leeseringen. We may, however, institute proceedings against the customer at his place of residence or place of business.

(2) The contractual relationship shall be governed only by German law. The UN Law of Purchase (CISG) shall not apply.

§ 12 Saving clause

Should any individual provision of this contract be or become void, illegal or unenforceable, the validity of the remaining provisions hereof shall in no way be affected.

BREMSKERL-REIBBELAGWERKE
EMMERLING GMBH & CO. KG
ESTORF-LEESERINGEN