

## Terms and Conditions for the Sale and Delivery of Goods by EHG and General Information, as of July 2016

### I. General

- a) All our deliveries, services and offers are exclusively subject to these terms and conditions for the sale and delivery of goods and services („Terms“). Derogations from these Terms must be agreed in writing. We hereby object to the customer's terms and conditions; these will not form part of a contract. Any action in performance of a contractual obligation shall not be deemed to as consent to deviating terms. b) The following Terms are also applicable to e-commerce, unless other provisions apply. Furthermore, consumer transactions are governed by Sections 5a et seq Consumer Protection Act (KSchG).

### II. Conclusion of contract

- a) Offers are subject to change. Illustrations, drawings and brands are non-binding. b) A contract shall be deemed to have been concluded if we have confirmed the customer's order in writing or if we have actually executed the customer's order and shipped the goods to the customer. Oral ancillary agreements are effective only if made in writing. c) The customer shall procure in due time any official consents which are necessary to execute the transaction. The customer is responsible for adverse consequences due to delays.

### III. Prices

- a) Prices are quoted on a net basis without any deduction. Prices do not include expenses for packaging, delivery, assembly, installation or storage. These expenses will be agreed separately or charged at list prices. b) Weight and the resulting price of our materials cut precisely to length are determined theoretically and charged according to the practices established by the German industrial and commercial chambers (e.g. IHK Bonn and Düsseldorf) existing since 1967 (pursuant to § 346 UGB). The customer is obliged to pay the price so determined. c) Where prices were not explicitly agreed for orders, we will charge the prices applicable on the day of delivery, for deliveries ex works the published prices on an ex-works basis, and in case of deliveries ex warehouse the warehouse prices published by us. Extra charges, public duties, new taxes and freight as well as any increase of these charges which will directly or indirectly affect the deliveries shall be borne by the customer. c) We will charge Austrian value added tax for collected goods not intended for the EU, which will be reimbursed to the customer, provided that the customer produces the export certificate for tax purposes.

### IV. Delivery, transport, delay in acceptance

- a) Goods are generally delivered on an ex works or ex warehouse basis. Goods that have been reported as ready for shipping must be called off immediately. Partial deliveries are allowed. Risk and costs are borne by the customer as soon as the goods are made available in the factory or warehouse. Unless otherwise agreed, goods will be delivered unpackaged. Goods delivered on an ex works or ex warehouse basis will be loaded by the customer. The customer retains sole responsibility for compliance with the legal provisions applicable to vehicle and trailer loading, including but not limited to §101 KFG and § 61 StVO. The customer undertakes to hold harmless and indemnify EHG in case EHG should be held liable due to the legal provisions mentioned above. b) Goods are supplied on an ex warehouse basis in marketable quality without guarantee of the suitability of the goods for a specific purpose or a specific treatment. Deliveries according to standards are subject to the technical standards of the producing country. The customer shall be deemed to have agreed in advance to minor or other changes in respect of the services and supplies we are obliged to provide, which the customer can reasonably be expected to accept, including but not limited to deviations due to the item in question. c) We will charge the costs actually incurred, including a reasonable surcharge for overheads, but not less than the normal freight and carriage charges for the chosen means of transport or

those applying on the day of delivery for transport and delivery.

Divergent regulations must be agreed on the basis of the INCOTERMS, as amended from time to time. We shall have the choice of the shipping route, the means of transport, the means of protection, covered cars and crane lorries which will be charged separately, to the exclusion of any liability. We are not liable for timely transportation, twisting or bending, rust film or any other impact on the delivered goods due to weather conditions. d) If the customer accepts the goods with delay, we may charge the value of the goods and store the goods at the customer's risk and expense - 0.1% of the gross invoice amount per started calendar day - on our premises or, at the customer's risk and expense, with a licensed storage facility. In case of any delay in acceptance of the goods, we will be liable for the loss or deterioration of the purchase items only in case of our gross fault.

### V. Delivery schedule

- a) Delivery schedules are generally subject to change. The customer may not lodge claims for compensation of damage due to late delivery. Notwithstanding the above, times of delivery will start on the work day following the day on which we have accepted the order, yet not before all details of execution were clarified. If times of delivery are determined by days, only work days will be counted. If the customer is required to create preconditions (e.g. documents, consents, etc.), the time for delivery will start once these conditions have occurred. This applies also whenever dates or times of delivery have already been agreed. b) As a matter of principle, goods shall be deemed to have been delivered once the customer was notified that they are ready to be shipped.

### VI. Right to return goods

Goods may only be returned on the basis of an agreement. We will charge a handling fee of 20% of the value of goods for returned goods. We charge collection fees in the amount of € 18.50 or an agreed freight rate. We will not take back already processed or treated materials. Consumers are entitled to return the goods 7 days after receipt of the goods (§ 5e KSchG).

### VII. Terms of payment, default interest, set-off

- a) Unless otherwise agreed, the purchase price is payable within 8 days from the invoice date on a net basis, free and clear of charges for us. A discount may be deducted for immediate payment only if agreed in a particular case. Any agreements on discounts will enter out of force if the customer is in default with a partial payment. b) We will accept discountable bills of exchange in lieu of payment only if that was agreed in advance. Provided that the funds are received, they will be credited on the value date on which we can dispose of the equivalent value. Fees, charges and other disbursements are charged by us and are payable without delay. c) In case of late payment, we are entitled to statutory default interest (§ 352 UGB) at a rate of 8% p.a. above the base rate, unless the actual bank interest rate is higher. Dunning charges incurred by us due to the delay at a flat rate of € 12.00 per dunning letter must be reimbursed. After the 3rd unsuccessful letter of reminder, we may appoint a collection agency or law firm; the customer must reimburse us for the respective expenses. d) If the customer does not observe the terms of payment and if circumstances occur which could impair the customer's creditworthiness, all outstanding debts will be due for payment. In this case, we may either continue to perform the contract or withdraw from the contract without notice and claim compensation for the damage we have suffered due to the customer's failure to perform. If the customer is late with payments, the customer must secure all outstanding debts either by assigning or granting pledges to these debts or providing other appropriate collateral for our benefit. e) If payment by instalments was agreed, the entire outstanding debt will be due if the customer does not pay two consecutive debts.

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All outstanding partial payments are then immediately due for payment without a grace period. f) The customer authorizes us to set off the customer's claims against amounts receivable by us or by our parent companies, affiliated or sister companies or companies arising from those companies, regardless of an absence of reciprocity and/or maturity of the debts. The customer may only set off or retain unobjected counterclaims that are due for payment.

### VIII. Reservation of title

- a) Title to the delivered goods remains vested with us until such time as the purchase price was paid in its entirety, and the goods shall be liable for all amounts receivable by us or by our parent companies, affiliated companies or sister companies or entities arising from these companies. All items previously delivered by us shall be liable for outstanding debts. b) If third parties access the goods to which title remains vested in us, the customer must point out to them that title to these items remains vested with us and must notify us without delay. The customer carries the full risk of loss or deterioration of the goods until such time as outstanding debts were settled in their entirety. c) Entitlements towards insurers, if any, shall already have been assigned to us within the limits of § 15 VersVG. d) If the customer acquires claims against third parties by way of selling, mixing, combining or processing our goods, we are entitled to request the assignment of these claims in lieu of payment. The customer undertakes to notify the customers in due time of the assignment, to disclose the identity of the customer at our request, and to make available to us any information which allows us to enforce our extended title to the goods. The customer may not pledge or transfer the goods to which title remains vested with us for security purposes. e) If the customer mixes, combines or processes the goods, the customer is obliged to transfer to us our co-owned share so created to secure the residual purchase price.

### IX. Warranty, complaints, compensation for damage

- a) The time of the transfer of risk shall be decisive. Defects must be notified in writing without delay, in any event within 14 days after delivery. Hidden defects must be notified in writing immediately when discovered, not later than 6 weeks after receipt of the goods. Any processing and treatment must be stopped immediately when defects arise. The customer must allow us to inspect the goods or must make immediately available samples at our request. In case of remediable defects, warranty obligations may be fulfilled either by exchanging or improving goods within a reasonable deadline. b) Downgraded (IIa) material and special items at special prices can be inspected prior to shipment. There is no warranty of any kind for these materials. c) We will inspect and warrant only for the external characteristics of items delivered ex our warehouse. d) All claims of the customer for compensation which may arise from the business relationship shall be statute barred within 6 months from the date of knowledge of the damage and, in case of the supply of material, shall not exceed the value of the goods. We shall not be liable for any further damage, including but not limited to consequential damage or damage caused by defects, cost of production, etc, and disclaim any liability in case of slight negligence.

### X. Product liability

- a) If claims are lodged for the compensation of damage according to the Austrian Product Liability Act (PHG), we are obliged to disclose the producer or importer into the EU within a period of three months. Agreements made with customers have no protective effects in favour of third parties. If claims are asserted against a foreign customer, recourse claims, if any, shall be governed by Austrian law, to the exclusion of the conflict of law rules of International Private Law.

### XI. Data privacy, change of address, copyright

- a) The customer agrees that we may use any data made available to us in connection with our business activities. Customers are required to notify any change in residence or business address without delay. The customer shall be deemed to have received statements if they were sent to the address most recently indicated. b) We will always retain title to plans, drafts or other technical documents, samples, catalogues, prospectuses, illustrations and the like. We do not grant customers the right to use or otherwise exploit these materials.

### XII. Impossibility of performance, penalty

- a) If we and/or our suppliers are unable to perform, either fully or partially, after conclusion of a contract without our fault, including but not limited to force majeure, including strikes and major malfunctions, our commitment shall be discharged. If we are only temporarily prevented from performing the contract, we may withdraw from the still unperformed part of the contract. c) However, if customers withdraw from the contract or insist on cancellation of the contract without justification, we may either insist on performance of or agree to cancel the contract. In the latter case, customers must pay us at our election liquidated damages equal to 15% of the gross invoice amount or the actual damage, even in the absence of fault or damage.

### XIII. Place of performance, choice of law, venue

- a) Place of performance shall be our company's registered offices. b) Contracts are governed by and construed in accordance with Austrian law. The UN Sales Convention is explicitly excluded. The language of the contract shall be German. c) The parties agree on the jurisdiction of the Austrian courts, and more specifically on the local and subject-matter jurisdiction of the court located at our registered offices. In case our stock price list applies, besides the „Terms and Conditions for the Sale and Delivery of Goods“ the following terms and conditions apply:

#### Prices:

All prices quoted in that list are non-binding and non-cartelised prices applicable to commercial customers and consumers. All prices are net prices ex warehouse Dornbirn plus VAT. In case of changes, we will charge the prices quoted on the day of delivery. Agreed discounts are not applicable to purchased items. These prices will be agreed separately.

#### Weights:

The indicated weights are customary commercial weights. Goods for which prices are indicated per meter, square meter, cubic meter or unit are calculated on the basis of commercial weights. Prices per weight can be determined only on the basis of these commercial weights. Sale weights are determined using calibrated scales or according to the mentioned commercial weights.

#### Minor supplies:

The prices are calculated on the basis of the order quantity per item. We add a surcharge if the net invoice value of supplies and pick-ups is less than EUR 200.00.

#### Delivery:

An additional freight charge + VAT is billed for each shipment within our delivery area.

If desired, we can deliver to destinations outside our delivery area, provided that special agreements were made in these cases.

Proper and safe access roads are a key condition to all deliveries.

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If we deliver goods to prescribed loading points which are not always occupied and the acceptance of the goods can therefore not be confirmed, we assume that you agree that we leave the goods at the recipient's risk. The delivery note and the copy will be sent by post for confirmation.

### **Complaints:**

Visible defects should be documented on the copy of the delivery note when the goods are accepted and be countersigned by the delivery agent, or preferably notified immediately to the competent sales department on the phone or by fax. Furthermore, Section IX. of our „Terms and Conditions for the Sale and Delivery of Goods .. applies.

### **Repossession of goods:**

Return shipments must be agreed with our sales department, which will generate a call-back order; our fleet will be instructed

to collect the shipment. Our drivers are not allowed to load goods without a call-back order.

We will charge the expenses we have incurred for returned goods from the invoice amount (at a rate of at least 10% for unprocessed material, and 30% for processed material).

### **Packaging:**

We deliver the goods unpackaged or in customary, environmentally-friendly packaging at our packaging rates.

### **Printing errors:**

Typographical errors cannot be excluded. Illustrations, dimensions, and data are therefore non-binding, errors and typesetting errors are reserved.