

## STANDARD CONDITIONS OF SALE AND DELIVERY

*The English translation is for your information only; the German wording shall be governing.*

### 1 Scope of Application

- 1.1 This Standard Conditions of Sale and Delivery shall prevail for all supplies of goods and services by EWS Weigele GmbH & Co. KG (hereinafter referred to as „EWS“).
- 1.2 The customer's standard business conditions shall not be applicable under no condition. This shall also hold good, if EWS supplies the services without reservation and in awareness of conditions to the contrary of or deviating from these Standard Conditions or if EWS signs client orders.
- 1.3 This Standard Conditions of Sale and Delivery of EWS shall also prevail for all future transactions with the customer without the requirement of an express reference.
- 1.4 These Conditions shall only apply to companies as defined by § 14 BGB (German Civil Code), legal persons of public law and foundations under public law.
- 1.5 In relation to any agreed commercial clauses, the current version of the ICC Incoterms shall apply, unless the partners agree otherwise.

### 2 Quotations – Conclusion of the Contract – Contract Documents

- 2.1 Our quotations are – unless otherwise expressly provided – not binding and without engagement.
- 2.2 Our salespersons and sales agents are not authorized to make oral subsidiary agreements.
- 2.3 A contract shall be only effected, if either our written binding quotation has been accepted by the customer in writing within the specified deadline or the purchase order has been acknowledged in writing by EWS or accepted by EWS through delivery or invoicing.
- 2.4 Specifications contained in prospectuses and similar written materials (illustrations, drawings, specifications of performance, weight and dimensions) are only approximate specifications. They do not constitute – subject to an otherwise express agreement – agreed or warranted qualities.
- 2.5 EWS shall retain title and copyrights to illustrations and drawings, calculations, cost estimates and other documents. These documents shall not be disclosed, published or reproduced or used for other purposes than the agreed purposes without the prior written consent of EWS.

### 3 Prices – Price Advance – Payment Terms

- 3.1 Our prices are calculated in EURO per piece, unless otherwise expressly provided, strictly net ex works and are exclusive of incidental expenses like packing, transport and insurance charges. The statutory value-added tax is not included in the prices, but is itemized separately in the invoice on the day of invoicing.
- 3.2 EWS reserves the right to adapt the prices, which are based on material and labor costs, foreign currency costs, customs duties and tax charges at the time of the conclusion of the contract, to any increase of some or all of these costs occurring in the time between the conclusion of the contract and the delivery or supply of service.
- 3.3 Unless our quotation or our acknowledgement of order provides otherwise, invoices shall be payable immediately and strictly net. Payments shall be made exempt from costs and charges into the bank accounts of EWS specified in the invoice.
- 3.4 Bills and checks offered are only accepted by us, if agreed upon in writing, and only on account of payment. The payment shall not be deemed made until the owed amount including costs and discount charges has been irrevocably credited to EWS and EWS can dispose of the proceeds.

### 4 Delays in Payment

- 4.1 If the customer is in arrears, EWS shall be entitled to demand interests on arrears in the amount of at least 8% above the valid base rate (§ 288 Para 2 BGB). EWS reserves the right to furnish proof of a higher damage.
- 4.2 If the customer defaults in payment for more than 14 days or if the financial circumstances of the customer deteriorate, the entire claims of EWS against the customer shall be due immediately and regardless of any granted terms of payment and regardless of the term of any accepted endorsable securities.

### 5 Set-Off, Right of Retention

- 5.1 The customer shall be entitled to set off counterclaims only, if these counterclaims have been recognized by final

judgment, are undisputed or have been acknowledged by EWS.

5.2 The customer shall be entitled to exercise a right of retention only, if its counterclaim is based on the same contract.

## **6 Delivery, Partial Delivery, Delivery Times**

- 6.1 Our delivery dates are not to be interpreted to be fixed dates as defined by § 323 Para 2 No. 2 BGB, § 376 HGB (German Commercial Code). If EWS does not effect the delivery within the agreed term of delivery, the customer shall grant a period of grace of 3 weeks. The customer may only grant a shorter period of grace, if granting a period of grace of 3 weeks is unreasonable for the customer due to the actual circumstances which were foreseeable by EWS when the contract was concluded. The mere fact that the parties have agreed on a binding date of delivery is not sufficient. Rights from the delay may not be derived by the customer until the period of grace has expired.
- 6.2 The compliance with the agreed term for deliveries and supplies of services requires the timely receipt of all documents, required permissions, licenses and approvals, particularly including plans, to be provided by the customer, and the compliance with the agreed terms of payments and other obligations by the customer. If these requirements are not met in due time, the term shall be extended reasonably, unless EWS has to account for such delay.
- 6.3 The term of delivery shall be deemed complied with, if the delivery item has been shipped until the expiry of such term.
- 6.4 Partial deliveries are permitted as far as acceptable for the customer. EWS shall be entitled to invoice such partial deliveries.

## **7 Obstruction of Delivery, Reservation as to Availability of Supplies**

- 7.1 The term of delivery shall be extended reasonably in case of unforeseeable events not accounted for by EWS, e.g. temporary factory closures, strikes, lockouts (also with suppliers of EWS), or similar events such as riots, mobilizations or war, even if such events occur during a delay in delivery.
- 7.2 If such events make it impossible to supply the delivery or service within 3 months, the customer and EWS shall be entitled to withdraw from the contract in whole or in part. The customer shall not be entitled to claims for damages due to such withdrawal.
- 7.3 EWS shall be relieved from its obligation to deliver and perform, if EWS through no fault of its own has not been supplied in time and properly with the correct merchandise and cannot perform the contract.

## **8 Passing of Risk**

- 8.1 The risk of accidental deterioration or loss of the products shall pass to the customer, as soon as the products have been surrendered to the customer or to the person designated to ship the delivery, however at the latest when they leave our factory, even if EWS undertakes the dispatch, if partial deliveries are made or if EWS has undertaken to provide other services as well.
- 8.2 If the transport delays for reasons not accounted for by EWS or due to the conduct of the customer, the risk shall pass to the customer upon notice of EWS that the merchandise is ready for transport.
- 8.3 EWS shall be entitled, but not obliged to effect a transport insurance. The costs of such transport insurance shall be charged to the customer.
- 8.4 If the customer has not issued written shipping instructions, EWS shall determine the means of transport, the route of transport and the transport insurance, without being obliged to choose the fastest or most inexpensive option.
- 8.5 If the products are damaged or get lost during transport, the purchaser shall promptly cause the carrier to make an ascertainment of facts.

## **9 Obligation to Accept – Non-Performance**

- 9.1 If the customer fails to accept delivery, we may – after having unsuccessfully granted to the customer a reasonable time limit for performance or subsequent performance – withdraw from the contract and claim damages.
- 9.2 Damages in the amount of 15% of the agreed price may be claimed by EWS without proof. The customer may furnish proof that damages did not occur at all or not in the asserted amount. EWS reserves the right to assert and prove a higher damage.

## **10 Reservation of Title**

- 10.1 EWS shall retain title to the delivered products until all claims arising from the business relationship between the customer and EWS have been satisfied in full. This retention also applies, if the purchase price for certain supplies designated by the customer has been paid.

- 10.2 The customer may process, join and mix the products under our reservation of title in the ordinary course of business, unless the customer is in default of payment or has ceased payments. Any processing, joining or mixing of the delivered products shall always be carried out for the benefit of EWS as the producer, without EWS incurring any obligations in this respect. In case the (co-)ownership ceases through processing, joining or mixing, it is agreed already now that the (co-)ownership in the new object shall pass to EWS in proportion of the invoice values of the processed, joint or mixed products. The purchaser shall hold the objects of our (co-)ownership in custody free of charge for EWS.
- 10.3 The purchaser may sell the products under our reservation of title or (co-)ownership in the ordinary course of business, unless the customer is in default of payment or has ceased payments. The customer shall not pledge or assign by way of security the products under reservation of title. A sale into foreign countries shall be permitted only with our prior written consent. For the event that the customer sells products under reservation of title, the customer already now assigns to EWS, until the satisfaction of all claims of EWS, the rights arising for the customer from such sale against its purchasers along with all ancillary rights, securities and reservations of titles. EWS may request that the purchaser advises its purchasers of the assignment and provides all information and documents to EWS required for the collection.
- 10.4 The customer may collect the claims assigned by EWS, as long as the customer is not in default of payment or has not ceased payments. For the event that the claims of the customer from the resale of the products under reservation of title are received in a current account, the customer already now assigns its claim for payment from the respective recognized balance in the amount of the associated claims from the resale of the products under reservation of title. If EWS has only co-ownership title in the sold products, the aforesaid assignment shall apply only in the amount of the co-ownership of EWS. If products under reservation of title are sold together with other products at an overall price, the aforesaid assignment shall apply only in the amount of the invoice value of the products under reservation of title.
- 10.5 The customer shall notify EWS promptly and object, if products under reservation of title or other objects or claims to which EWS has titles are attached by third parties or otherwise may be impaired. The notification has to comprise the necessary documents. Expenses incurred by EWS due to such events shall be refunded by the customer.

## 11 Claims of Defects in Quality, Complaints, Time Limits for Notices of Defect

- 11.1 As far as we are liable for redhibitory defects, EWS shall be entitled to a subsequent performance, at our option by removal of the defect or delivery of faultless items.
- 11.2 Claims for defects in quality shall become statute-barred 12 months after the date when the risk was passed.
- 11.3 Claims shall be advised to EWS promptly in writing, at the latest within one week after handover (visible defects) or discovery of the defect. Otherwise the assertion of claims for defects shall be excluded. The assertion of defects by the customer requires in addition that the customer has properly complied with its statutory duties of inspection and of lodging complaints. In case of transport damages the purchaser shall promptly cause the appropriate ascertainment of facts to be made and to be delivered to us.
- 11.4 Claims for defects shall not be applicable in case of detriments resulting from wear and tear, incorrect or negligent treatment and maintenance, improper storage, unsuitable or improper use or non-compliance with our instructions for processing and use. The same applies to defects resulting from modifications of the delivered item made by the customer without our prior consent.
- 11.5 We shall be not obliged to satisfy claims for defects, as long as the purchaser is in arrears with payment of the purchase price in an amount exceeding the reduced value of the delivered item caused by the defect.
- 11.6 Claims for damages may be asserted by the customer only as provided for by Article 13 below.

## 12 Defects in Title

- 12.1 EWS shall be obliged, unless otherwise agreed, to supply the deliveries and services free of defects in title, especially free of industrial property rights and copyrights of third parties (hereinafter "property rights"), only in the country of the place of delivery.
- 12.2 The customer shall be obliged to inform us promptly in writing, if third parties assert against the customer defects in title, especially the infringement of patents, trademarks, copyrights or other property rights or if the customer becomes aware of an infringement of property rights.
- 12.3 In the first instance, EWS shall be granted the opportunity for remedy within a reasonable time limit. EWS shall be entitled, at its option and at its expenses, either to obtain a right of use for the affected deliveries and services or to modify or replace them in a way that third-party property rights are not infringed anymore and the agreed specifications are still complied with. If EWS is not able to effect such remedy at reasonable conditions, the customer shall have the statutory rights of rescission and reduction. The obligation of EWS to pay damages shall be governed by Article 13.

- 12.4 The aforesaid obligations of EWS shall be only valid, if
  - 12.4.1 the customer informs EWS promptly in writing about the infringement and allows EWS the sole control over the defense of the claim, so that EWS may make and carry out all decisions on defending the claim and the resulting proceedings, particularly including selection and appointment of all legal councils and experts,
  - 12.4.2 the customer does not prejudice the defense of the claim by any concession, statement or conduct, whether act or omissions and does not conduct any correspondence concerning the claim.
- 12.5 Claims of the customer shall be excluded to the extent that the customer itself has caused the infringement or if the defect in title is based on an instruction of the customer or if the infringement was caused by the customer having modified the delivered item arbitrarily or used in a way not conforming to the contract.
- 12.6 Further and other claims of the customer than those stipulated by this provision against us and our vicarious agents on the grounds of defects in title shall be excluded.

### **13 Limitation of Liability for Damages**

- 13.1 EWS shall be liable for damages and for compensation of frustrated expenses as defined by § 284 BGB (hereinafter "indemnification") on account of defects of deliveries or services or on account of the violation of other contractual or non-contractual duties, especially from tort, only in case of intention or gross negligence. The aforesaid limitation of liability shall not be applicable, if EWS harms life, limb or health, if EWS has assumed a warranty or a sourcing risk, if EWS violates material contractual duties or is liable pursuant to the applicable product liability law.
- 13.2 Indemnifications on account of a violation of material contractual duties shall be limited to the compensation of such damages that we should have been able to foresee when concluding the contract on account of evident circumstances (typical damages), except in the case of intention or gross negligence or injuries to life, limb or health caused by EWS, or if EWS is liable due to the assumption of a warranty or a sourcing risk.
- 13.3 All limitations of liability shall apply in the same extent for our vicarious agents and servants.
- 13.4 A change of the onus of proof to the disadvantage of the purchaser is not implied by the above stipulations.

### **14 Terms of Use („Website“), Scope of Application, Services**

- 14.1 Any use of one of our web sites (summarizing called „EWS Web Site“), provided by EWS and/or its affiliates, is subject to these terms of use. These Terms of Use may be amended, modified or replaced by other terms and conditions, e.g. for the purchase of products and services. With log-in, or where a log-in is not required, in accessing or using the EWS Web Site, these Terms of Use are accepted in their then current version.
- 14.2 In the case of Web offers aimed at companies or public enterprises, such companies or enterprises are represented by the User and must assume that the User has appropriate knowledge and acts accordingly.
- 14.3 The EWS Web Sites contain specific information, images and in specific instances - related documentations, for viewing or downloading.
- 14.4 EWS may stop the operation of the EWS Web Site in full or in part at any time. Due to the nature of the internet and computer systems, EWS cannot accept any liability for the continuous availability of the EWS Web Site.
- 14.5 Some pages of the EWS Web Site may be password protected. In the interest of safety and security of the business transactions, only registered Users may access said pages. EWS reserves the right to deny registration to any User. EWS particularly reserves the right to change certain sites, which were previously freely accessible, so that they are subject to registration. EWS is entitled, at any time and without obligation to give reasons, to deny the User the right to access the password-protected area by blocking its User Data.

### **15 Rights of Use to Information and Documentations, User Behavior**

- 15.1 The use of any information and documentation made available on or via our Web Sites is subject to these Terms of Use. EWS grants the User a personal non-exclusive and non-transferable license, to use the information, images and documentation, to the extent of the purpose intended by EWS in making same available.
- 15.2 Information, images and documentation may not be distributed by the User to any third party at any time nor may it be rented or in any other way made available.
- 15.3 Our Web Site may contain confidential and/or proprietary content of EWS that is protected by copyright and other laws respecting proprietary rights, including the images, documentation, and/or all other information. The User shall observe such laws.
- 15.4 In accessing or using the EWS Web Site the User shall not harm other persons, in particular minors, or infringe their personal rights; breach public morality in its manner of use; violate any intellectual property right or any other proprietary right; upload any contents containing a virus, so-called Trojan Horse, or any other program that could damage data; transmit, store or upload hyperlinks or contents to which the User is not entitled, in particular in cases where such hyperlinks or contents are in breach of confidentiality obligations or unlawful; or distribute advertising

or unsolicited e-mails (so-called „spam“) or inaccurate warnings of viruses, defects or similar material and the User shall not solicit or request the participation in any lottery, snowball system, chain letter, pyramid game or similar activity.

- 15.5 EWS may deny access to the EWS Web Site at any time, in particular if the User breaches any obligation arising from these Terms of Use.

## 16 Hyperlinks, Viruses

- 16.1 Our Web Site may contain hyperlinks to the web pages of third parties. EWS shall have no liability for the contents of such web pages and does not make representations about or endorse such web pages or their contents as its own, as the EWS does not control the information on such web pages and is not responsible for the contents and information given thereon. The use of such web pages shall be at the sole risk of the User.
- 16.2 Although EWS makes every endeavor to keep this EWS Web Site free from viruses, we cannot make any guarantee that it is virus-free. The User shall, for its own protection, take the necessary steps to ensure appropriate security measures and shall utilize a virus scanner before downloading any information, software or documentation.

## 17 Export / Import Controls

- 17.1 Our Business partners understands that certain transactions of EWS are subject to export control laws and regulations, including but not limited to the UN, EU and the USA export control laws and regulations („Export Regulations“), which prohibit export or diversion of certain products and technology to certain countries. Any and all obligations of the EWS to export, re-export or transfer Products as well as any technical assistance, training, investments, financial assistance, financing and brokering will be subject in all respects to such Export Regulations and will from time to time govern the license and delivery of Products and technology abroad by persons subject to the jurisdiction of the relevant authorities responsible for such Export Regulations.
- 17.2 If the delivery of products, services and/or documentation is subject to the granting of an export or import license by certain governmental authorities or otherwise restricted or prohibited due to export/import control regulations, EWS may suspend its obligations and the Business partner's/end-user's rights until such license is granted or for the duration of such restrictions or prohibitions. Furthermore, EWS may even terminate the relevant order in all cases without incurring any liability towards the Business partner or end-user.
- 17.3 Business partner warrants that it will comply in all respects with the export, re-export and transfer restrictions set forth in such Export Regulations or in export licenses (if any) for every Product supplied to the Business partner. Our Business partners accept the responsibility to impose all export control restrictions to any third party if the items are transferred or re-exported to third parties.
- 17.4 Our Business partner shall take all actions that may be reasonably necessary to ensure that no customer/purchaser or end-user contravenes such Export Regulations. Business partners shall indemnify EWS against any and all direct, indirect and punitive damages, loss, costs (including attorney's fees and costs) and other liability arising from claims resulting from Business partners' or its customers' breach or non-compliance with this article. The Business partner acknowledges that the obligations contained in this Agreement shall survive the termination of any agreement of other arrangement under which the products or technology was provided. EWS may deny access to the EWS Web Site at any time, in particular if the User breaches any obligation arising from these Terms of Use.
- 17.5 In addition, in the event of any conflict in the terms provided in this Agreement with any other document entered into between our Business partner and EWS, our Business partner understands that the terms of this Agreement shall control and be binding.

## 18 Compliance

- 18.1 Environment:** Our Business partners are obliged to comply with all applicable national and international laws, regulations and standards to protect the environment. The Business partner guarantees and warrants compliance with all statutory safety and environmental regulations of the Federal Republic of Germany.
- 18.2 Remuneration and working time:** The EWS and our Business partner are obliged to fully comply with applicable national statute on working time. Furthermore, we expect that the employees of our Business partners receive a remuneration which is in line with applicable national statute.
- 18.3 Child and Forced Labor:** At EWS, we expect our Business partner to prohibit and refrain from any kind of child or forced labor within their organization.
- 18.4 Conflict Minerals:** The Business partner shall not use any conflict minerals for the production for the goods being ordered, referring to Section 1502 of the US-American Dodd Frank-Acts, and shall only purchase products which contain no such conflict minerals from sub-suppliers.
- 18.5 Money laundering:** Our Business partner are obliged to comply with all applicable statute governing the prevention

of money laundering, and not to participate in any money laundering activities.

- 18.6 Prohibition of corruption and bribery:** At EWS, we expect our Business partner to have zero-tolerance for corruption and to ensure compliance with all United Nations (UN) and Organization for Economic Co-operation and Development (OECD) conventions against corruption, and with all governing anti-corruption laws.
- 18.7 Unrestricted competition:** At EWS, we expect our Business partner to always compete in a fair manner and to comply with applicable antitrust laws and regulations. Our Business partners are expected not to enter with competitors into agreements that might constitute a breach of antitrust law, nor to take advantage of any dominant market position they might hold.
- 18.8 In the event that a Business partner repeatedly violates the law and/or violates the law despite being given respective advice, and fails to evidence that the violation of the law has been cured as far as possible and that appropriate precautions have been taken to avoid violations of the law in future, we reserve the right to terminate or withdraw from existing contracts without notice.

## 19 Place of Performance, Place of Jurisdiction, Choice of Law

- 19.1 The place of performance for all obligations of both parties shall be Uchingen (Germany).
- 19.2 The German version of these General Terms and Conditions shall be binding and alone decisive in the construction hereof, even in the event that any translation of these General Terms and Conditions has been provided to the Business partner or executed by the parties.
- 19.3 The place of jurisdiction for all disputes between us and the customer, also arising from checks or bills, shall be Göppingen (Germany).
- 19.4 The privity of contract between us and the customer shall be exclusively governed by the substantive law of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded.

## 20 Data Protection

Personal data of Business partner will be treated in compliance with the effective provisions of the laws on data protection. EWS is the controller. EWS will store and process personal data, particularly address and order data, for the execution of the business transactions. Storage and processing will only take place insofar as it is necessary for the execution of the business transactions. The above shall be deemed notification pursuant to § 33 German Federal Data Protection Act.

## SEVERABILITY CLAUSE

In the event that any provision(s) of these General Terms and Conditions shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions thereof. In the event that any provision of these Terms and Conditions shall finally be determined to be unlawful or unenforceable, such provision shall be deemed severed from these Terms and Conditions, but every other provision shall remain in full force and effect, and in substitution for any such provision held unlawful or unenforceable, there shall be substituted a provision of similar import reflecting the original intent of the clause to the extent permissible under applicable law.

The failure on the part of either party to exercise, or any delay in exercising, any right or remedy arising from the Agreement shall not operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy arising therefrom preclude any other or future exercise thereof or the exercise of any other right or remedy arising from the Agreement or from any related document or by law.

*As of: 13 January 2016*