

General Terms and Conditions

§ 1 General – Scope

(1) Our Conditions of Sale are valid exclusively; conflicts with or deviations from our conditions of sale in the supplier's conditions are not recognized by us unless we have agreed to them expressly in writing. Our conditions of sale shall also apply even if we, being aware of conflicting terms and conditions of the Buyer or terms and conditions of the Buyer that deviate from our sales terms and conditions, carry out the delivery to the Buyer.

(2) All agreements between us and the Buyer with the purpose of executing this contract, are contained in writing in this contract.

(3) Our Conditions of Sale apply only to companies according to § 310 Para. 1 of the German Civil Code.

§ 2 Quotation – Quotation Documents

(1) If the order is to qualify as an offer in accordance with § 145 of the German Civil Code, we can accept this within 2 weeks.

(2) We reserve ownership and copyrights for images, drawings, pricings and other materials and samples. This applies particularly to written documents which are designated as „confidential“; passing on said documents by the Buyer to third parties is subject to our explicit written consent.

§ 3 Prices – Terms of payment

(1) Unless otherwise stated in the order confirmation, our prices are „ex works“.

(2) Our prices do not include the statutory sales tax; the sales tax is stated in the invoice separately at the applicable rate on the date of the invoice.

(3) The deduction of discounts requires a special agreement in writing.

(4) Unless otherwise provided in the order confirmation, the net sales price (without deduction) will be due at the time of delivery. The statutory regulations on payment default shall apply.

(5) The Buyer shall only have the right to off-set any counterclaims he has where such claims have been found to be legally valid, are uncontested or have been recognized by us. Moreover, the Buyer shall only be entitled to exercise a right of retention as far as the counterclaim is based on the same contractual relationship. General Conditions of Sale, eutecma gmbh.

(6) We reserve the right to provide the agreed service by mail or electronically by e-mail invoice.

§ 4 Delivery time

(1) The delivery time determined by us shall commence only once all technical details have been clarified.

(2) The fulfilment of our delivery commitment further requires the punctual and proper fulfilment of the Buyer's duties. The right to object to non-performance of the contract shall be reserved.

(3) If the Buyer is in default of acceptance or culpably violates other obligations to co-operate, we are entitled to demand compensation for losses incurred, including any extra expenses. The right to make any further claims is reserved.

(4) If the circumstances defined in sub-clause 4.3 arise, the risk of accidental loss or deterioration of the contract goods shall be transferred to the Buyer at the point in time at which he fell into arrears or debt.

(5) Under the statutory provisions we are liable, insofar as the underlying purchase agreement is a firm deal according to § 286 para. 2

Nr. 4 of the German Civil Code or § 376 of the German Commercial Code. We shall also be liable under the statutory provisions if, as a consequence of delivery default attributable to us, the client becomes entitled to claim that his interest in the contract ceases to exist.

(6) Furthermore, we assume liability under the statutory provisions if the delay in delivery is due to intentional or grossly negligent breach of contract; whereby any fault of our representatives or vicarious agents shall be deemed to be attributable to us. Insofar as the delay in delivery is not the result of an intentional breach of contract for which we are responsible, our liability for damages is limited to the foreseeable damage that may typically occur.

(7) We also liable under the statutory provisions, insofar as the delay in delivery is based on a culpable violation of an essential contractual obligation on our part; however, in this case, the liability for damages is limited to foreseeable damage that may typically occur.

(8) Any further legal claims and rights of the Buyer are reserved.

§ 5 Transfer of Risk – Cost of packaging

(1) Unless otherwise stated in the order confirmation, our prices are „ex works“.

(2) Upon Buyer's written instruction we will take out transport insurance for the shipment; the Buyer will bear all associated costs.
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§ 6 Warranty

(1) Any warranty claims of the Buyer shall require that the latter has properly complied with his duties to inspect and to report any complaints in accordance with § 377 of the German Commercial Code.

(2) Insofar as the item is defective, the Buyer shall be entitled to supplementary performance in the form of rectification of the defect or delivery of a new item free of defects, at his discretion. In the case of defect removal, we are obliged to cover all necessary expenses, in particular transport, travel, labor and material costs, provided that said costs are not increased by the fact that the purchase item was carried to a place other than the place of performance.

(3) Where we are unable to rectify the fault, the Buyer shall be entitled, at his discretion, to rescind the contract or demand a reduction of the purchase price.

(4) We shall be liable under statutory regulations to the extent that the Buyer asserts damage claims based on intent or gross negligence, including intent or gross negligence on the part of our representatives or agents. Provided no charges of wilful breach of contract have been brought against us, the liability for damages is limited to foreseeable damage that may typically occur.

(5) We shall be liable under statutory regulations, insofar as there is culpable violation of an essential contractual obligation on our part; in this case, the liability for damages is limited to foreseeable damage that may typically occur.

(6) Liability on account of culpable injury to life, limb or health shall not be affected; this also applies for mandatory liability according to the Product Liability Act.

(7) Unless otherwise agreed to in writing, all other liability is expressly and specifically excluded.

(8) The limitation period for defect claims is 12 months from the transfer of risk.

(9) This shall not affect the limitation period in the event of delivery recourse in accordance with §§ 478, 479 of the German Civil Code: it shall be five years, calculated from return of the defective item.

§ 7 Aggregate Liability

(1) Further liability for damages beyond the extent provided for in § 6 shall be excluded regardless of the nature of law, under which the claim is made. This applies particularly to damage claims for liabilities resulting from contract closure, due to other non-fulfilment of commitments or legal claims for property damage according to § 823 of the German Civil Code.

(2) As far as our liability is excluded or restricted, these exclusions and restrictions shall also apply with regard to the personal liability of the employees, workers, representatives, agents and vicarious agents of eutecma gmbh.

§ 8 Safeguarding Retention of Title

(1) We retain property rights of the purchased goods until such time as all payments arising from the contract have been received. Should the Buyer breach contract, in particular default on payment, we are entitled to recover the purchase goods. Our repossession of the goods shall not be construed as a cancellation of the contract unless we have expressly declared in writing that it is to be cancelled. Repossession of purchased goods shall always constitute a withdrawal from the contract. After repossession of the purchased goods, we are entitled to sell them, the proceeds of sale must be applied to the liabilities of the Buyer - less any reasonable costs of sale.

(2) The Buyer is obliged to handle the purchased goods with due care and attention; he is further obliged to insure the goods for replacement value at his own expense against fire, water and theft. Should maintenance and inspection work be necessary, the Buyer must perform such work in good time and at his own expense.

(3) In case of seizure or other interventions by a third person, the customer is obliged to inform us in writing immediately so that we can institute proceedings according to § 771 of the German Code of Civil Procedure. As far as the third party is not in a position to refund to us the judicial or extrajudicial expenses of our prosecution or defence, in particular an action as defined by § 771 of the German Code of Civil Procedure, the Buyer shall be liable for the loss incurred by us.

(4) The Buyer is entitled to resell the purchase item in the regular course of business; however, at that time, he thus transfers to us all receivables from his/her customers or third parties resulting from the resale, equivalent to the final amount invoiced (including sales tax), irrespective of whether the purchase goods have been resold in an unprocessed condition or after processing. The Buyer shall remain entitled to collect this claim even following the assignment. Our authority to collect the receivable ourselves shall remain unaffected by this. However, we undertake not to collect the amount owing as long as the Buyer complies with his payment obligations deriving from the monies received, does not default on payment and, in particular, as long as no application is lodged for bankruptcy or conciliation proceedings against him or as long as he has not suspended payments.

Should this be the case, however, we may demand that the Buyer discloses to us the assigned claims and their debtors, that he furnishes all necessary information, surrenders all appropriate documents and that he notifies the debtors (third parties) of the assignment.

(5) The processing or modification of the purchased item by the Buyer will always be carried out on our behalf. If the purchase item is processed with other items not belonging to us, we shall acquire part ownership of the new item in the same ratio as the value of the purchase item (final total of invoice including sales tax) to the value of the other items at the time of processing. The same provisions apply to the item created through this processing as apply to the purchase item under reservation of title.

(6) If the purchase item is indivisibly amalgamated with other items not belonging to us, we shall acquire part ownership of the new item in the same ratio as the value of the purchase item (final total of invoice including sales tax) to the value of the other items at the time they were amalgamated. If the amalgamation occurs in such a way that the property of the Buyer is identifiable as the main property, it is agreed that the Buyer transfers proportionate co-ownership to us. The Buyer shall take custody of the sole ownership or co-ownership that has thus been created on our behalf.

(7) In order to secure our claims, the Buyer hereby also cedes to us, to the extent of the value of the items supplied by us, his claims against third parties resulting from the installation of our goods in third party premises.

(8) Should the value of the securities owed to us exceed the receivables by more than 10%, we are obligated upon the Buyer's request, to release the respective amount, while the securities to be released shall be selected at our discretion.

§ 9 Jurisdiction at the Place of Fulfilment

(1) As far as the Buyer operates a business, our place of business is also the relevant place of jurisdiction; we are, however, also entitled to sue the buyer at the court of his place of residence.

(2) The law of the Federal Republic of Germany shall apply; UN International Trade Law does not apply.

(3) Unless otherwise stated, Mannheim shall be the place of fulfilment

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