

Standard Terms and Conditions for the Sale of Goods by EFS Schermbeck GmbH (EFS)

1. Preamble

- 1.1. These Standard Terms and Conditions for the Sale of Goods shall exclusively apply to all agreements and contracts concerning the sale of goods by EFS. They shall also apply for all business in future, even though they might not again be included by express agreement accepted in writing by both parties. Any conditional or different terms proposed by the buyer are objected to and will not be binding upon EFS unless assented in writing by the EFS.
- 1.2. All Agreements concerning the sale of goods by EFS to the buyer are put down in writing in the contract, the acknowledgement of order and these Standard Terms and Conditions.
- 1.3. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document of information issued by EFS shall be subject to correction without any liability on the part of EFS.
- 1.4. The provisions of these Standard Terms and Conditions extend to standard contract conditions which are used in a contract with a merchant in the course of business only.

2. Orders and Specifications

- 2.1. No order submitted by the buyer shall be deemed to be accepted by EFS unless and until confirmed in writing by EFS or the seller's representative within 7 days after submittal.
- 2.2. The quantity, quality and description of and any specifications for the goods shall be those set out in the quotation of EFS (if accepted by the buyer) or the buyer's order (if accepted by EFS). Measures, weights, pictures and drawings as well as other documents, which are not binding for EFS, remain in the ownership of EFS and will only be without obligation unless not being marked as binding by express agreement accepted in writing by both parties.

3. Price of Goods

- 3.1. The price of the goods shall be the quoted price of EFS or, where no price has been quoted, the price listed in the published price list of EFS current at the date of acceptance of the order.

- 3.2. EFS reserves the right, by giving notice to the buyer at any time before delivery, to increase the price of the goods to reflect increase in the costs to EFS which is due to any factor beyond the control of EFS (such as foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of wages, materials, production or delivery).
- 3.3. Except as otherwise stated under the terms of any quotation or in any price list of EFS, and unless otherwise agreed in writing between the buyer and EFS, all prices are given by EFS on an ex works basis but packaging included. The price is exclusive of any applicable value added tax, which the buyer shall be additionally liable to pay the seller at its valid amount.

4. Terms of Payment

- 4.1. The buyer shall pay the price of the goods within 10 days of the date of the invoice of EFS. Payment shall be effected by interbank payment transaction only; no cheque or bill of exchange will be considered as fulfilment of the payment obligation.
- 4.2. In case it is agreed between the parties that the buyer has to deliver a letter of credit issued by his bank (or any bank acceptable to EFS), it is assumed that any letter of credit will be issued in accordance with the Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 500.
- 4.3. If the buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to EFS, EFS shall at his discretion be entitled to:
 - cancel the contract or suspend any further deliveries to the purchaser; or
 - charge the buyer interest on the amount unpaid, at the rate of 8 per cent per annum above the European Central Bank reference rate from then being valid, until payment in full is made. EFS reserves the right to claim any higher damage resulting from the delay.
- 4.4. The buyer is not entitled to set any claims or demands against those of EFS, no matter if they result out of defects or of other reasons, unless final or accepted by EFS or indisputable. Even then the buyer may only retain payment, if the reason for his demand is based in the same contract.

5. Delivery

- 5.1. Delivery of the goods shall be made by the buyer collecting the goods at EFS's premises at any time after EFS has notified the buyer that the goods are ready for collection or, if some other place for delivery is agreed by EFS, by EFS delivering the goods to that place.
- 5.2. Time and dates for delivery or expiry which are not expressly described as obligatory in the Contract shall be without obligation.

5.3. EFS is entitled to part delivery or part performance.

5.4. If the buyer fails to accept delivery on due date, he shall nevertheless make any payment conditional on delivery as if the goods had been delivered. EFS shall arrange for the storage of the goods at the risk and cost of the buyer. If required buy the buyer EFS shall insure the goods at the cost of the buyer. EFS reserves the right to claim further demands.

5.5. If and as far as not agreed upon other in writing by both parties EFS shall be liable in case of not delivering on due date in accordance with the rules of law.

6. Transfer of Risks

Risk of damage to or loss of the goods shall pass to the buyer as follows:

- in the case of goods delivered at the premises of EFS (ex works) at that time when the seller notifies the buyer that the goods are available for collection;
- in the case of goods to be delivered otherwise than the premises of EFS, at the time of delivery, but at the time of leaving those premises at the latest no matter if the goods are being delivered from the place where EFS has fulfilled its obligations or who pays for the costs of freight;
- if the buyer wrongfully fails to take delivery of the goods or in case he does not fulfil other obligations connected with delivery, at the time when EFS has tendered delivery of the goods;

7. Retention of title

7.1. Notwithstanding delivery and the passing of risk in the goods or any other provision of these conditions, the property in the goods shall not pass to the buyer until EFS has received payment in full of the price of the goods and all other goods agreed to be sold by EFS to the buyer for which payment is due. EFS shall have absolute authority to retake, sell or otherwise deal with or dispose of all or any part of the goods in which title remains vested in EFS.

7.2. Until such time as the property in the goods passes to the buyer, the buyer shall hold the goods as fiduciary agent for EFS, and shall keep the goods properly stored, protected and insured.

7.3. Until that time the buyer shall be entitled to resell the goods in the ordinary course of its business, but shall account EFS for the proceeds of sale or otherwise of the goods including insurance proceeds, and shall keep all such proceeds of sale separated from any moneys or properties of the buyer and third parties. From the beginning of the contract the buyer cedes to EFS his legal demands that result out of the sale of the goods further to third parties in the amount of his sales price, at least in the amount of the recommended sales price of EFS, value added tax included, and EFS accepts that ceding. The buyer shall still be able to claim those demands for himself as well as EFS shall be entitled to

claim for the same reason. EFS will not do so as long as the buyer pays the demands of EFS within due time with the money received from his customers and as long as he does not apply for insolvency or stops paying at all.

- 7.4. If third parties take up steps to pledge to otherwise dispose of the goods, the buyer shall immediately notify EFS. If the buyer fails to do so in due time he will be held liable for the damages caused.
- 7.5. EFS shall on demand of the buyer release any part of the collateral if the value of the collateral held in favour of EFS exceeds more than 20 % of the value claims being secured.

8. Warranties and Exclusion Clauses

- 8.1. Warranty requires that the buyer has examined the goods immediately after delivery according to quantity, damages out of transport, obvious defects, condition and their quality and has notified any such complaints to EFS within two weeks.
- 8.2. Where any valid claim in respect of any Goods which is based on any defect in the quality or condition of the goods or their failure to meet specification is notified to EFS in accordance with these Conditions, EFS shall be entitled at its sole discretion to either replace the goods free of charge or repair the goods. The buyer shall be obliged to give EFS the chance to either replace or repair the goods within appropriate time. If EFS is neither ready nor able to either repair or replace the goods the buyer shall be entitled at the buyer's sole discretion to claim for reduction of price or the cancellation of the contract.
- 8.3. There is no warranty for insignificant differences to specification, practice as well as not for signs of wear. This warranty does not cover defects in or damage to the products which are due to improper installation or maintenance, misuse, neglect or any cause other than ordinary commercial application. There is also no warranty for wrongful repair works or alterations of the goods.
- 8.4. EFS shall not be liable under the above warranty if the total price for the goods has not been paid by the due date for payment;
- 8.5. Any claim by the buyer which is based on any defect in the quality or condition of the goods or their failure to correspond with specification shall be notified to EFS within twelve months from the date of delivery.

9. Miscellaneous Clauses

- 9.1. EFS reserves the right to improve or modify any of the products without prior notice, provided that such improvement or modification shall not affect the form and function of the product.

- 9.2. Each party shall be responsible for all its legal, accountancy and other costs and expenses in the performance of its obligation hereunder.
- 9.3. The buyer may not transfer or cede claims or demands out of the contract without the approval of EFS.
- 9.4. This agreement shall be governed by and construed in accordance with German Law and each party agrees to submit to the jurisdiction of the courts having jurisdiction for EFS.
- 9.5. EFS shall have the right to bring a claim before a court at the buyer's principal place of business or at his discretion before any other court being competent according to any national or international law.
- 9.6. If any clause of these Standard Terms and Conditions should or will be void or cannot be performed this will not have any consequences for the other clauses of the Standard Terms of Conditions.

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Place, Date

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Place, Date

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Signature

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Signature