

General Sales Conditions of AEE GmbH

§ 1

General

1. Our sales conditions are the sole accepted conditions. We are not excepting further or opposed conditions for sales by the client, unless we have accepted these explicitly in writing. Our sales conditions supersede even if we acknowledge the client's conditions insofar they vary from our sales conditions and proceed with delivery without reservations.
2. All agreements between us and the client concerning the fulfilment of this contract are defined in this contract in writing.
3. Our sales conditions are only valid for companies conforming with §310 part 4 BGB (German Civil Code).

§2

Offer – Documents of Offer

1. If the order is qualified as an offer corresponding with §145 BGB (German Civil Code), we are entitled to accept this offer within (2) weeks.
2. On illustrations, drawings, calculations and further documents we reserve rights of ownership and copyright. This condition also applies for such written documents labeled "confidential". It is not permissible to assign rights to a third party or to give them to a third person without our written consent.

§3

Prices – Terms of Payment

1. As far as nothing else is declared in the "confirmation of order", our price is valid "ex works", excluding packaging; packaging will be charged separately.
2. Our price is without any applicable taxes; Value added tax will be charged separately at the day of the invoicing.
3. Cash discount deductions have to be agreed upon in a separate written agreement.
4. Unless there are no other conditions specified in the "confirmation of order", the purchase price net (without discount) is payable within 30 days, counting from the date of invoicing.
5. For the duration of the default of payment, the client owes the Contractor interest for late payment to the amount of 9 percentage points above the base interest rate according to § 247 BGB (German Civil Code) if the Contractor is an entrepreneur. The enforcement of higher default damages remains unaffected.
6. The client is only entitled to deduction if his claims are legally identified or undisputed or accepted by us. The customer is further authorized to exercise the right of retention, if his counterclaim is based upon the same contractual relationship.

§4

Lead Time (Delivery)

1. Beginning of lead time – declared by us – requires the clarification of all technical questions.
2. The compliance of our delivery commitments requires an on time and proper completion of commitment of the customer. Exception of the non-fulfilment of the contract is reserved.
3. If the client is in default of acceptance or impinges on other cooperative obligations we are entitled for reimbursement of the incurred expenses including any additional expenditure. We reserve the right for any further incurring expenses.
4. If the conditions of point 3 apply, the risk of a casual total devaluation or a casual worsening of the product is exchanging from our company to the client at the time of default of acceptance or debtors delay.

5. We are liable according to the legally provisions, as far as the contract of sale is a contract where time is of the essence within the §286 paragraph 2 number 4 BGB (German Civil Code) or of §376 HGB (German Commercial Code). We are also liable according to the legally provisions in case of default of delivery by us - if the customer is entitled to a claim, that his interest on further completion of the contract is decrepit.
6. We are further liable according to the legal provisions, as far as the delayed delivery was based on an intentional or negligent breach of contract represented by us. Fault of our representatives or agents is going to be charged to our company. Provided that the delayed delivery was/is not based on an intentional breach of contract by us, our liability for compensation of damages is limited to the foreseeable typical damage.
7. We are also liable according to the legal provision if the delayed delivery caused by us is based on a culpable violation of an essential obligation under the contract; In this case our liability for compensation of damages is limited to the foreseeable typical damage.
8. Further legal claims and rights of the customer are reserved.

§5

Transfer of Risk – Packing Costs

1. As far as no other terms are declared in the “confirmation of offer”, the delivery is “ex work”.
2. Return of packaging materials require special terms.
3. If requested by the client, we will insure delivery by transport insurance; the applicable expenses will be charged to the client.

§6

Liability for Defects

1. Deficiency claims by the client require that the client has fulfilled his analyses and notice of defect obligations according to § 377 HGB (German Commercial Code) properly.
2. In case of a present defect of the purchase item, the client is entitled at his choice to either supplementary performance in form of deficiency removal or to delivery of new product free from defects. In case of deficiency removal, we are obligated to carry all necessary expenses, especially transport, work and material costs, as far as the costs do not rise due shifting of purchase item from place of fulfilment to another location.
3. In case of failure of supplementary performance, the client is authorized at his choice to claim either reduction or cancellation.
4. We are liable according to statutory regulations as far as the client claims damages which are based on intentional or gross negligence, including intent and gross negligence of our representatives or agents.
5. We are liable according to statutory regulations as far as we violate culpably substantial contractual obligations; in this case the liability for claims of damages is restricted also to the substitute of predictably and typically occurring damages according to §6 part 3.
6. If the client is entitled to replacement of damages instead of delivery of goods, our obligation is limited to the provisions of 6.3. of this contract to the substitute of predictably and typically occurring damages.

§7

Total Liability

1. Further liability for compensation than designated in §6 is – without respect for the “nature of law” of the claimed entitlement – excluded. This is applicable particularly for claims of damages resulting from defaults of contract conclusion, because of further breach of duties or because of tortuous claims for damages according §823 BGB (German Civil Code).
2. Further the definition according §7 part 1 is applicable, if the customer asks for compensation of futile expenditures instead of claims for damages.

3. If the claims for damages against us are excluded or constricted, is this also applicable in terms of the personal claims for damages of our employees, wage earners, representatives and agents.

§8

Securing of Retention of Title

1. We reserve the right of ownership of merchandises until all complete payment resulting from the contract for delivery. If the customer is in breach of contract – especially delay of payment – we are entitled to take back the merchandise. The withdrawal of merchandise by us represents a cancellation of the contract. After withdrawal of merchandise we are entitled to their utilization; the revenues of the utilization are chargeable towards the customer's liabilities – minus adequate costs of utilization.
2. The customer obligated to handle the merchandise with care; in particular the customer is obligated to insure – at his own expense - the merchandises adequately and on replacement value against fire-, water- and theft damages. If works for maintenance and inspection are necessary, the customer has to execute these in time at his own expense.
3. In the case of seizure of property or other intervention of a third party the customer has to advise us immediately in writing, so that we are able to bring suit according as §771 ZPO. As far as the third party is not able to repay us the judicial and extra judicial costs of a suit according as § 771 ZPO, the customer is liable for the cost accrued to us.
4. The customer is authorized to sell the merchandise in the regular course of business; but the customer gives us already now all claims in amount of the final amount of the invoice (including value added tax) of our receivable, which is generated by resale to his customers or third party. And this is independent, whether the merchandise was resold with or without processing. After the assignation, the customer is also authorized, to collect this receivable. Our entitlement to collect the receivable remains in effect. But we are obligated not to collect the receivable if the customer is fulfilling his payment obligations from the received revenues, is not in delay of payment and especially if there is no petition filed of opening of composition- or insolvency proceedings or if there is no suspension of payment existent. But if this is the case, we can demand that the customer proclaims to us the transferred receivables and their debtors, gives us all statements which are necessary for collection, hands over all corresponding documents and advises the debtors (third parties) about the assignation.
5. The processing or alteration of purchase item through the customer will be always done for us. If the merchandise will be converted with other items, which do not belong to us, we are entitled to the coownership on the new items proportional to the value of the merchandise (final amount of the invoice, including value added tax) to the other converted items at time of processing. For items generated by processing the general terms are applicable as for under reserve delivered items.
6. If the merchandise will be mixed inseparable with other items, which do not belong to us, we are entitled to the co-ownership on the new items proportional to the value of the merchandise (final amount of the invoice, including value added tax) to the other mixed items at time of amalgamation. If the amalgamation takes place in the kind that the item of the customer is to be treated like a main item, it is agreed that the customer transfers to us proportional co-ownership. The client takes into safekeeping that in this way generated right of ownership or co-ownership for us.
7. The customer also assigns the claims for securing our claims against the customer, which are generated by the connection of the merchandise with a property against a third part.
8. We oblige to approve deposit of securities, which we are entitled to, on request of the customer as far as the realizable value of our securities exceeds the receivables which are to be secured by more than 10%; we are entitled to choose the selection of the released securities.

§9

Jurisdiction – Place of Court

1. In case that the client is a business person, our business location is the court of jurisdiction; but we are also entitled to take the client to court at his court of jurisdiction.
2. The law of the Federal Republic of Germany is prevailing; the validity of the UN law is excluded.
3. If there are no explicit other agreements in this confirmation of order, our business location is the place of jurisdictions.
4. The German version of this contract is the prevailing document. In case of different opinions of interpretation, the German version is the leading document.