

General Terms and Conditions of Supply of enwitec electronic GmbH & Co.KG

I. Validity

The supplier's offers, acceptance of orders and all supplies will only take place on the basis of the following "General Terms and Conditions of Sale and Supply".
The buyer's terms and conditions of purchase are hereby expressly excluded and shall not be binding on the supplier even if not expressly excluded when the contract is formed.
Any other terms and conditions shall only be valid if the supplier expressly agrees to the validity of the buyer's terms and conditions.

II. Offer; formation of contract

1. The supplier's offers shall be made subject to change and the supplier's written confirmation unless expressly agreed otherwise in writing. The acceptance of orders received from salesmen or representatives is reserved, and the supplier's written confirmation is also required.
Any documents belonging to an offer such as drawings, designs or weight specifications and other descriptions are only approximate and provide a rough description and definition of the delivery items. The same applies to the performance and consumption data.
This data represents no guarantee of the character or durability of the delivery items. The supplier reserves the right to alter the dimensions and weight of the items until they are delivered.
2. The supplier shall retain the right of ownership and copyrights of all drawings, designs, calculations and other documents including brochures and catalogues.
Any use not covered by this Agreement or any disclosure to third parties must be expressly authorised by the supplier in writing.

III. Prices; payment

1. The prices are stated exclusive of packaging, freight and insurance, ex-works, and do not cover re-orders.
The costs of packaging will be charged separately, transport and insurance will be charged when incurred and upon agreement.
Framework agreements will not be affected by these provisions and the respective terms and conditions will be agreed separately.
2. The prices are based on the actual costs up until the time of the supplier's written confirmation. If these actual costs increase before the delivery date due to increases in taxes, the prices of raw materials, supplies, energy, transport costs or wages, the supplier is entitled to adjust the agreed price accordingly.
Such price increases shall not give the buyer the right to withdraw from the contract.
3. If the agreed delivery date is more than four months after the contract is formed or if the supply takes place more than four months after the contract is formed for reasons attributable to the buyer, the supplier is entitled to charge the price which is valid on the date the supply is made.
4. The agreed delivery price plus statutory VAT shall become due and payable on receipt of the invoice, without prejudice to any other agreement. Payments to the supplier's salesmen or representatives are not permitted, without a written authority for collection.
If several invoices are outstanding, payments will first be allocated to the oldest claims and if costs and interest have accrued, payments will first be allocated to the costs then to the interest and finally to the main service, and in turn to the oldest invoices.
5. Retentions or offsetting against the purchase price will only be permitted with in the case of unchallenged or legally-binding claims.
The buyer may only exercise its right of retention if its counterclaim relates to the same contract.

IV. Default

1. If the payment deadline is exceeded or in the event of subsequent delay, legal interest will be charged.
2. If the buyer fails to honour a cheque or if the supplier becomes aware of a significant worsening in the buyer's circumstances which jeopardises its ability to pay, the total remaining debt outstanding will become due.
If the total remaining debt is not paid immediately, the buyer shall lose its right to use the delivery items.
The supplier is entitled either to have the delivery items returned to it, without prejudice to its claims, or to withdraw from the contract.
If such circumstances are known after formation of the contract but before the supply is made, the supplier may refuse to supply the goods and request that payment and delivery be reciprocal and simultaneous even if other payment terms and deadlines have been agreed. Alternatively, the supplier may request a guarantee.
3. If the buyer fails to fulfil its payment obligations even after having been served with a notice to pay within an appropriate deadline, the supplier may have the delivery items returned, or withdraw from the contract. In the case of a hire purchase business, the supplier may withdraw from the contract on account of the buyer's delay in paying, under the terms and conditions provided for by law.
4. If the supplier withdraws from the contract, the supplier is also entitled to claim compensation in lieu of performance or the reimbursement of any expenditure made in vain, if it has first given the buyer notice to perform with an appropriate deadline, to no avail.
If the supplier has demanded compensation in lieu of performance, it may charge 25 % of the agreed purchase price, with no deductions, as the amount of compensation.
The supplier is free to prove and claim further losses and the buyer is also free to prove that a loss has not arisen or that it is significantly lower than the sum demanded.
This shall also apply if the buyer not only defaults in respect of payment but also in respect of accepting the goods or any other obligation to cooperate.
5. If the withdrawal takes place after the goods are delivered, the supplier not only has the right to the return of the goods but may also claim compensation for making the goods available for use. This claim shall take effect independently of claims for compensation and reimbursement of expenditure made in vain.
6. All the above provisions shall also apply in the case of direct delivery to the end customer at the behest of the buyer.

V. Delivery period

Delivery, the delivery period or collection by the buyer will be agreed separately.
The delivery period shall begin on the day on which the order confirmation is sent and shall be deemed to have been complied with if the goods have left the factory at the end of the delivery period.
The delivery period will be extended accordingly in the case of industrial action, in particular strikes or lock-outs, or in the event of unforeseen circumstances beyond the supplier's control such as disruptions to operations, shortages of raw materials or traffic disruptions etc., provided that it can be proven that such events have a significant influence on the production or delivery of the goods to be supplied.
This shall also apply if the events affect sub-suppliers or subcontractors.
The aforementioned circumstances shall not be attributed to the supplier if they occur during an existing period of delay.
Compliance with the delivery period requires the buyer's compliance with the contractual conditions, and in particular the procurement of any permits or licences required from the authorities.
Otherwise the delivery period and delivery date shall be extended accordingly.

VI. Shipping

All shipments shall be made according to the supplier's best judgement, at the buyer's expense.
The supplier reserves the right to choose the method of shipment, and no claims may be made against the supplier on the grounds of the chosen method.

VII. Shipment abroad

Shipments abroad are also subject to the additional terms and conditions of export and any other specific agreements.
It is also agreed that Incoterms 2010 shall apply, upon which the supplier may rely.

VIII. Transfer of risk; acceptance

The risk is transferred to the buyer upon delivery of the goods to the carrier, regardless of whether the supplier or the buyer commissioned the carrier, even in the case of partial deliveries or if the supplier still has other services to perform, without prejudice to any other agreements.
In the event of a delay to the shipment which may take place by rail or freight at the supplier's discretion, caused by circumstances attributable to the buyer, the risk shall be transferred to the buyer from the date on which the goods were prepared for shipment; however the supplier must take out any insurance requested by the buyer, at the expense of the latter. The delivered goods must be accepted by the buyer even if they display minor defects, without prejudice to the rights under clause 9.
Partial deliveries are permitted to the extent that this is reasonable for the buyer.

IX. Warranty

If the delivery has deficiencies, these deficiencies shall, at the discretion of the Supplier, either be remedied or the defective parts replaced by the delivery of new goods free of defects, whereby the goods replaced shall become property of the Supplier.
Of the direct costs arising from subsequent improvements and/or replacement deliveries, the Supplier – provided the complaint is deemed to be justified – shall bear the costs of the replacement part.
Repair of defective goods shall be performed on the manufacturer's premises. Expenses incurred for the disassembly and reassembly, transportation, packaging etc. shall be borne by the Purchaser.
Manufacturer's warranties passed on within the scope of the delivery such as conformity and/or clearance certificates of the manufacturer shall not represent any warranty of the Supplier nor any contractual agreement of the Supplier on quality.
In case of transactions in which no consumer is involved, the Supplier shall not assume any responsibility for product components which have been provided by the Purchaser.

X. Limitation period

Warranty claims shall expire after two years from delivery of the goods.
The legal period shall however be the longer period specified under sections 478 and 479 of the German Civil Code, in respect of material defects in buildings and building components, retrospective claims of the buyer or construction.
The legal limitation period shall also apply in cases of death or injury to body or health, in the event of gross negligence or wilful misconduct by the supplier or fraudulent concealing of defects.

XI. Liability for compensation

1. The supplier shall be liable to pay compensation in accordance with the law if the customer enforces claims based on fraud or gross negligence including the fraud or gross negligence of its representatives or servants.
If the supplier is not accused of any intentional breach of contract the liability to pay compensation will be limited to typical and foreseeable damages.
2. The supplier shall be liable by law if it is guilty of a material breach of contract. In such a case, the compensation for damages will be limited to typical and foreseeable damages.
3. Liability due to death, culpable bodily injury or injury to health shall remain. This shall also apply in the case of mandatory liability under the Product Liability Act.
4. Liability is excluded except where governed by the foregoing.

XII. Reservation of title

1. The supplier shall retain title to the goods until receipt of all payments under the contract.
The buyer must handle the goods carefully, and in particular must insure them at its own expense against fire, water and theft up to the replacement value.
Any maintenance and inspection works must be carried out by the buyer at its own expense, promptly and diligently.
2. The buyer must report to the supplier promptly and in writing in respect of any seizure, confiscation or other third party access to the goods, so that the supplier can exercise its rights as holder of title to the goods.
If this provision is violated the buyer shall be liable for any corresponding loss of the supplier.
The buyer may dispose of the goods during the normal course of business, however it hereby assigns to the supplier all receivables in the amount of the gross sale price of the supplier's account to which it may be entitled as a result of the resale.
The above is irrespective of whether the goods are re-sold before or after conversion.
The customer is entitled to collect receivables even after assignment, subject to the supplier's authority to disclose the assignment of receivables and collect the receivables itself.
This shall remain provided that the buyer fulfils its payment obligations, does not fall into arrears and no petition for winding-up or insolvency proceedings is submitted.
In such a case the buyer must immediately provide the supplier with all the required information about its customers together with the necessary documents and allow the supplier to disclose the assignment.
4. The conversion or alteration of the goods by the buyer will always be conducted for the supplier.
If the goods are converted with other items not belonging to the supplier, the latter shall hold joint ownership of the new items to the extent of the value of its own claim on the other items converted up to the date of the conversion.
The retention of title shall continue to apply entirely to the items created through conversion.
The buyer is authorised to re-sell the goods subject to retention of title during the course of its business operations.
The customer hereby assigns its claims to re-sale of the goods subject to retention of title to the retailer, regardless of whether said goods are re-sold without conversion or after conversion.
5. If the delivered goods are inseparably mixed with other items not belonging to the supplier, the latter shall hold joint ownership of the new items in proportion to the value of the sale item to the other items included up to the date of the conversion.
If the items are mixed in such a way that the items of the buyer is considered the main item, then the buyer shall confer to the supplier a proportional share of joint ownership and the buyer shall hold the sole or joint ownership of the supplier on its behalf.
6. If the delivered goods or items or objects manufactured as a consequence are further disposed of, converted directly or converted on a site belonging to a third party, in such a way that they become a material part of the third party site, the buyer's claims in lieu of these items against its customer or third party shall pass to the supplier as security, without the need for the latter to give a specific notice of assignment.
7. The supplier shall release the securities owing at the request of the buyer provided that the realisable value of the securities exceeds the claims to be secured by more than 10%, and the choice of which securities to be released is the responsibility of the supplier.

XIII. Miscellaneous

1. If even part of this Agreement is found to be unenforceable, the remaining provisions shall remain in force. The unenforceable provision shall be replaced with a provision that best reflects the economic intention of the parties.
2. The place of performance and jurisdiction shall be the place in which the supplier has its head office, to the extent that the buyer is construed as the trader in the sense of the law. The supplier shall however be free to bring an action in the place in which the buyer has its registered office.
All agreements between the supplier and the buyer must be made in writing. The requirement for the written form also applies to any amendments or side letters prior to or following formation of the contract.
The written form requirement also applies to any deletion of this written form clause.
3. German substantive law shall apply to any legal relationships connected to this Agreement. The UN Convention on Contracts for the International Sale of Goods (CISG) is hereby excluded.