

## 1. General

**1.1** Unless explicitly agreed otherwise, the following terms and conditions apply to all our consultations, quotations, sales, deliveries and performances and to the entire present and future legal relationships between us and our customer. Any terms and conditions of purchase of our customer, which entirely or partially oppose our terms and conditions or which oppose legal regulations, shall be hereby explicitly rejected. They shall also not become a constituent part of the contract if we provide delivery or work performance in the knowledge of opposing terms and conditions. If our terms and conditions were not given to our customer with the quotation or handed over on another occasion, they shall nevertheless apply if the customer knows them or should know of them from a former business relationship

**1.2** Our GTC only apply to contractors, corporate bodies regulated by public law or fund assets governed by public law in the meaning of § 310 Abs. 1

**1.3** No ancillary agreements shall be made by word of mouth. Agreements diverging from these conditions, in particular such agreements concluded with our representatives, shall only be binding in the individual case when confirmed by us in writing.

**1.4** Verbal ancillary agreements are deemed not to exist.

**1.5** The specification of the subject of contract shall be solely described in our quotations, order confirmation, and corresponding documents, without this representing a guarantee in the sense of § 443 BGB (German Civil Code)

**1.6** Any packaging shall be invoiced at cost and can only be returned to the respective works or distribution centre if agreed in the contract or stipulated according to legal regulations. The customer shall bear the transport costs to the return point.

**1.7** Multi-trip package is calculated at a daily rate if it is not returned to us free of charge within 21 days after arrival of the subject of the contract at our customer.

## 2. Prices

**2.1** Unless specifically agreed otherwise, our prices for deliveries apply ex works loaded f.o.t./f.o.w. plus VAT and packaging.

**2.2** If changes in the calculation bases occur due to higher wages and material costs, VAT increase or other circumstances, in particular technically related calculation changes, we shall be entitled to increase the contractual price to an appropriate extent with regard to the change in the calculation base. This also applies to call orders. This does not apply if our customer is a consumer acc. to § 13 BGB (German Civil Code) and our delivery is made within 4 months after conclusion of the contract.

## 3. Deliveries and delivery deadlines

**3.1** We shall not be liable for any delays, if our customer does not fulfil its cooperation duties at all or not in due time, in particular if he/ she is responsible for official approvals, execution plans, documents for the specification of the subject of the contract, clarification of all technical details and down-payments.

**3.2** If after the conclusion of the contract there are any signs of the economic capacity of our customer being endangered, such as e.g. delay or cessation of payment, application for bankruptcy proceedings, assignment of floating assets as security, unfavourable information from banks, credit institutes or credit insurers, we shall be entitled to refuse performance and, after an unsuccessful period of grace, to the provision of securities in the form of absolute bank guarantees or bank collaterals or advance payment, to withdraw from the contract and/or to demand compensation for damages. Setting a deadline does not apply if the loss of economic capacity of our customer is evident.

**3.3** Our confirmed delivery periods are non-binding dispatch dates. In case of divisible deliveries we are entitled to make partial deliveries and upon previously information of the customer also to deliver prematurely.

**3.4** In case of call orders an appropriate delivery period shall be deemed to be agreed, which may not be less than 6 weeks after being called for. If no production and acceptance dates are agreed upon, we can demand a binding specification of such dates 3 months after order confirmation at the latest.

If our customer does not meet this demand within 3 weeks after the sending of our letter on this issue, we shall be entitled to give a 2-week extension and, after unsuccessful expiry to demand compensation for damages and/or to withdraw from the unfulfilled part of the contract. The same shall apply if the subject of the contract or parts thereof have not been purchased or have not been delivered due to the fault of our customer after expiry of the delivery period.

**3.5** If circumstances beyond our control impede, delay or render impossible the execution of accepted orders, we shall be entitled to postpone the delivery or remaining delivery or partial delivery by the duration of the hindrance or to fully or partly withdraw from the contract, without the customer being entitled to compensation for damages. Beyond our control are e.g. official intervention, breakdowns, strikes, lockout, work interruptions caused by political or economic circumstances, lack of necessary raw materials or supplies, material shortage, power supply difficulties, transport delays due to traffic disruptions or unavoidable events occurring within our company, at our sub-suppliers' or in external companies on which the maintenance of our own operations depends.

The above also applies if these events occur at a point in time in which we are in delay.

**3.6** Our customer can only set a delivery extension deadline, if the agreed delivery date is exceeded by more than 2 weeks. This extension must be reasonable and be at least 3 weeks. Our customer can withdraw from the contract after the unsuccessful expiry of the extension period.

**3.7** In case of work performance, the agreement "Delivery free to construction site" includes transport. If applicable our customer shall be obliged to provide access paths or roads suitable for transport. Unloading times exceeding 1.5 hours (per vehicle) as well in case of non-acceptance, the entire costs of return transport and re-delivery shall be borne by our customer.

**3.8** In case of work performance, the agreement "ready-assembled" includes provision of assembly personnel, hoisting equipment and connecting material for the finished parts and technical processing in accordance with the specifications. Our customer shall provide free of charge and on time power and water and sufficient assembly, storage and floor space for cranes etc. on the construction site. Any underground pipelines, channels etc. shall be definitely stated by our customer with exact heights and axes and shall be protected by the customer from damage during traversing.

## 4. Dispatch and bearing of risk

**4.1** The dispatch of the subject of delivery shall take place by us ex works and at the risk of our customer, even if freight and other costs are borne by us. The subject of the contract shall be insured by us against transport damage only upon explicit instruction by and at the expense of our customer.

**4.2** If picking up has been agreed upon and if this does not take place within 8 days after the agreed date, the dispatch shall be arranged by us by the means considered favourable by us at the expense of our customer.

**4.3** The risk shall be transferred to our customer upon handover of the subject of contract to our customer, the first Haulage Company or forwarding agent. This also applies in case of individual partial deliveries and if we have assumed the dispatch costs.

**4.4** If dispatch is delayed upon request of the customer or is there is a delay in acceptance, then the risk shall be transferred upon information about readiness for dispatch. The storage of the subject of contract shall then take place on behalf of and at the expense of our customer.

## 5. Retention of title

**5.1** The subject of the contract shall remain our property until full payment of all our receivables, including future receivables from the customer to which we are entitled has been completed. The latter also applies to payment of specifically designated claims until any possibly existing current account balance has been settled.

**5.2** The goods subject to retention of title are to be properly stored separately from other objects at the expense of our customer and must be especially marked upon our request and insured against damage, destruction and loss. The corresponding insurance policy is to be presented to us by our customer upon request. Our customer shall hereby assign its claims from the insurance contracts in advance to us to the amount of the value of the goods subject to retention of title and consents to payment being made to us. We shall be entitled to take back the goods subject to retention of title and to have a representative authorised by us access the company and premises of our customer for this purpose.

**5.3** As long as our customer meets its obligations towards us as agreed, he/she shall be revocable entitled to sell our goods subject to retention of title in the course of normal business. In this case, or upon delivery of the goods subject to retention of title to a third party, no matter at what value or in what condition, or upon installation, the customer hereby already assigns to us until the full payment of all our receivables from these deliveries the receivables to which he/she is entitled from the sale, delivery or installation from those purchasing from it with all auxiliary rights including any possibly arising compensation claims to the amount of the invoiced value of our deliveries.

**5.4** If our goods subject to retention of title are treated or processed or mixed or converted, the treatment or processing, and/or the mixing or conversion shall be undertaken for us, but without assuming liability.

In case of processing by the customer with other objects not belonging to us, we shall be entitled to co-proprietorship in the new object in the ratio of the value of our goods subject to retention of title to the other processed goods at the point in time of processing. If our goods subject to retention of title are mixed or blended with other objects, we shall acquire co-proprietorship in the ratio of the value of the goods subject to retention of title at the point in time of being mixed or blended.

**5.5** In case of a prohibition of assignment at further sale, installation or in case of default of payment, our customer shall be obliged to inform the third-party purchaser of the advance assignment.

If goods subject to retention of title delivered by us are sold to a third party together with other objects, our customer shall be obliged to list these as separate invoice items.

Should separate invoicing not take place, the part of the total price receivable shall be assigned to us that correspond with the invoice value of our delivery. The above retention of title still remains if individual receivables of our customer against its third party purchaser are transferred to a current invoice. In this case our customer shall assign to us the existing amount to which we are entitled. In case of the customer being in default of payment, we shall be entitled to collect the assigned receivables directly from the third-party debtor.

**5.6** Exceptional dispositions by our customer such as e.g. pledging, assignment as security and transfer of ownership of our goods subject to retention of title are not permissible. Our customer is obliged to inform us immediately if third-party access to the objects belonging to us and to receivables such as e.g. pledges and any other kind of impairment of our property should take place. He/she shall bear the costs of intervention proceedings if he/she is responsible for said access.

**5.7** If the value of the overall security from the business relationship given to us exceeds our claims by more than 20 %, we shall be obliged to return the assignment to this extent upon request of our customer. The choice of the securities to be for return assignment shall be made by us.

## 6. Payments.

**6.1** If not otherwise agreed, invoices are to be paid in the agreed currency within 30 days after the invoice date without deduction. A discount is only granted upon special agreement and is calculated from the invoice value ex delivering works.

**6.2** Payments shall only be regarded as being effective when the paid amount is finally available. Payment by bill of exchange or check shall only be accepted on account of performance and upon special agreement.

Discount and bill charges shall be borne in all cases by our customer.

If payment by bill of exchange is agreed, the term of the bill of exchange shall not exceed 90 days after the invoice date.

**6.3** Incoming payments shall be used at our discretion for the payment of the oldest or lowest secured liabilities.

**6.4** Partial deliveries shall be invoiced immediately and shall each be due for payment irrespectively of the completion of the total delivery. Down-payments upon conclusion shall be set off against the respectively oldest partial deliveries in the event of a lack of other written agreements.

**6.5** Setting off against counterclaims shall only be permissible if said counterclaims have been recognized by declaratory judgment or have been acknowledged by us. The same shall apply to the assertion of rights of retention to the amounts stated in our invoices.

## **7. Compensation and withdrawal.**

**7.1** If the agreed payment dates are not adhered to by the customer, we shall be entitled to the rights arising from § 288 BGB (German Civil Code) (Claiming default interest). Furthermore we shall be entitled to make new agreements with regard to payment dates for future services.

**7.2** If our customer should be in delay of acceptance of the delivery or services or if he/she is in default of payment, we shall also be entitled after an appropriate extension period to fully or partly withdraw from the contract and/or to demand compensation to the amount of 20 % of the purchase price except as proof of higher damages is provided, in particular the costs for returns, unless the customer provides proof of lower damages. Granting an extension is not required if there is evidence of the loss of the economic capacity of our customer in the sense of item 3.2 after conclusion of the contract.

## **8. Guarantee.**

**8.1** The owed agreed specification of the subject of the contract results solely from the contractual agreements with our customer and not from other advertising statements, brochures, consultations and similar items. The adoption of a guarantee e.g. in the sense of § 443 BGB (German Civil Code) is not included.

**8.2** We advise according to the best of our knowledge based on our experience. Details and information regarding the suitability and application or use of the subject of the contract are not binding if they are not explicitly an agreed specification in the sense of item 8.1. They do not relieve the customer from performing its own tests.

**8.3** We shall be liable for defects in case of purchase excluding other claims as follows:

**a)** Customer claims arising from defects assume that the customer has, in accordance with § 377 of the German Commercial Code (HGB), duly satisfied his duty to examine the delivery item and to make a complaint in respect of a defect immediately. Our customer insofar shall be obliged to diligently check the subject of contract immediately upon receipt and to perform random tests if necessary. Obvious defects shall be specified and claimed in writing immediately after arrival and prior to the use of the subject of contract, at the latest however within 8 days after receipt. Even in the event of a complaint, the customer is obliged to accept the subject of the contract. It is to be properly stored and only to be returned upon our explicit request.

**b)** Defects that are not immediately recognisable despite a thorough check must be reported to us in the same way immediately after detection. The subject of the contract shall be deemed to have been accepted if an objection is not made in the required form and/or within the required period.

**c)** Our customer shall give our representatives the opportunity to inspect and check the subject of contract to which the complaint relates. Otherwise all guarantee claims shall expire.

**d)** We grant a 1 year guarantee as of delivery for fault-free material and professional manufacture unless a mandatory longer statutory guarantee period applies.

**e)** We do not grant a guarantee for improper use and treatment of the subject of contract.

Guarantee claims also expire if the subject of contract is damaged or destroyed due to improper handling or storage after the transfer of risk.

Contrary to the descriptions or guidelines having been included in the content of the contract by us, guarantee claims of any kind against us shall expire.

**f)** Conventional and/or production-related deviations in dimensions and material shall not entitle for complaint with regard to the subject of contract. DIN standards, if available, and our works standards apply for tolerances.

**g)** Excess or short deliveries in quantity and amount are allowed up to 15 % except on the delivery of doors, windows, masts, towers and sleepers; this does not entitle for complaint.

**h)** Defects shall be eliminated by repair or replacement at our discretion. Our customer shall give us reasonable time and opportunity for defect elimination. If this is denied, guarantee claims of any kind against us shall expire. If the supplementary performance repeatedly fails, our customer can withdraw from the contract or demand a price reduction. Further claims against us or our representatives, no matter what the legal reason, shall be excluded, unless we acted with intent or gross negligence or unless damage to life, limbs or health (personal damage) was caused, or if a breach of a duty, which is substantial for the achievement of the contractual purpose and only allows the proper implementation of the contract (cardinal obligation), has occurred.

**i)** No guarantee shall be assumed for special designs produced on the basis of the specifications, calculations or construction documents of the customer, if defects are caused by the latter.

**j)** We are liable within the legal provisions, as far as the customer asserts a claim on compensation which are based on intention or gross negligence of us or intention or gross negligence of our representatives or vicarious agents. As far as we are not accused of willful breach of contract, our liability for claims for damages is limited to the foreseeable, typically occurring damage.

**k)** We are also liable according to the statutory provisions if we culpably breach a material contractual obligation; As far as we are not accused of willful breach of contract, our liability for claims for damages is limited to the foreseeable, typically occurring damage.

**l)** Liability for culpable injury to life, limb or health remains unaffected; this also applies to mandatory liability in accordance with the product liability law.

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

**8.4** We grant a guarantee on construction services as follows:

**a)** Our guarantee is based on § 13 VOB/B (German Construction Contract Procedures/B). Therefore, guarantee shall be granted under exclusion of all other claims of our customer subject to the proviso that defects detected within 2 years after acceptance are eliminated by repair within a reasonable period. Withdrawal from the contract is excluded. We shall only be obliged to defect rectification if our customer has fulfilled its payment obligations apart from a reasonable amount withheld for the defective part of the delivery.

**b)** Acceptance is based on § 12 item 5 VOB/B (German Construction Contract Procedures/B). Following this, our performance is deemed accepted after a period of 12 workdays after written notification regarding the completion of the performance.

If our customer has made use of the service or part of the service, acceptance is deemed to have been given after the expiry of 6 workdays after commencing use.

## **9. Protective right.**

**9.1** Drawings, tools, pressure, punching or stamping pieces and special devices made by us shall remain our property.

**9.2** If we are to deliver in accordance with details, drawings, models, samples or using parts provided by our customer, the latter shall assume liability for the protective rights of third parties not being infringed. If applicable we shall point out to our customer rights known to us. Our customer shall hold us harmless from all third-party claims and shall compensate the damage occurred. Costs incurred shall by then be borne by our customer. If production or delivery should be prohibited by a third party relying on a protective right held by said party, we shall be entitled to stop the work without verification of the legal situation. The costs of possibly arising legal proceedings shall be borne by our customer.

**9.3** Drawings and samples submitted to us that have not lead to an order shall be returned upon request and at the expense of our customer; otherwise we shall be entitled to destroy them 3 months after submission of our quotation.

**9.4** The copyrights and, if applicable, commercial protective rights to the models, moulds and devices, drafts and drawings designed by us or by third parties on our behalf, belong to us, even if our customer has borne the costs.

## **10. Other provisions**

**10.1** We shall be entitled to process data received from our customer due to the business relationship in accordance with the provisions of the Federal data Protection Act, in particular to also provide the credit insurer with the data required for the credit insurance.

**10.2** The assignment of claims against us, to which our customer is entitled from the business relationship, shall be excluded.

**10.3** The place of fulfillment for the delivery is our respective delivering works, for construction services the place of the construction site. The place of fulfillment for payment is the registered office of the performing company.

**10.4** German law shall exclusively applicable to the exclusion of the UN-Sales Convention. The regulations of the UN Convention regarding the Assignment of Claims in International Trade and Commerce shall now already be considered agreed upon as being subject to a condition precedent for the moment of their coming into effect.

**10.5** The legal venue for all cases, including all future claims from the business including those arising from bills of exchange, cheques and other documents, if the ordering party is a merchant or, has established the apparent impression in the legal sense that he is a merchant in the sense of HGB (Federal Commercial Code), shall be Nuremberg.

## **11. Special conditions factoring business**

**11.1** Scope of application. The following terms shall apply exclusively with regard to all contracts we conclude in the factoring business in addition and with contradiction to our primarily above mentioned general terms and conditions.

**11.2** Notice of an assignment of an assignor. Payments with debt-discharging effect may only be made to the Eurofactor AG, Bajuwarenring 3, 82041 Oberhaching/Munich, to whom we have assigned our claims arising from our business relations. The deciding factor for the promptness of the payment shall be the date of crediting to the account of Eurofactor AG.

**11.3** Direct debit authorization in accordance with reservation. The customer, as long as he fulfils his paying duty to us, can seize himself any outstanding receivables. In the event of a stopped payment, an application for insolvency proceedings, a disputed check or bank note or seizure, the right to further sell or process the goods and to collect receivables shall be rendered null and void. Any assigned outstanding receivables that are received at a later point of time shall immediately be collected on a special account.

**11.4** Assignment of security claims. All rights existing in our favour from the stipulated security agreements - in particular the ownership by way of security and the reservation of ownership in any form - shall be assigned to Eurofactor AG.

**11.5** Right of Retention. The contractual partner is only authorized to exercise a right of retention if the counterclaim is based on the same legal relation. This also applies to financial collapse on our part.

**11.6** Transmission clause. We shall be entitled to record, store, process, use information and data about the customer and to transmit them to third parties, in particular for the purpose of claims collection or the outsourced debtors management for storage, processing and utilization.

**11.7** Product stewardship. Eurofactor AG is excluded from any product stewardship.

**11.8** Choice of jurisdiction clause. If the client is a merchant, a legal person under public law or a special fund under public law, the courts of Nuremberg shall have jurisdiction for any and all disputes as well as guarding all present and future claims from business, including disputes regarding bill of exchange, cheque litigation and other documents. Court of jurisdiction shall be either our domicile or the domicile of Eurofactor AG at Oberhaching near Munich.