

**Emile Nötling GmbH & Co. KG,**

Ust-Id-No. DE 135509301

**General conditions of sale**

These General Terms and Conditions of Sale are an integral part of all contracts concluded by us with our buyers and customers (hereinafter uniformly referred to as "buyers"), including current and future business relationships. Deviating agreements, in particular conflicting terms and conditions of our buyers, as well as collateral agreements require our express consent in each individual case in order to become part of the contract.

**I. General information**

1. the following terms and conditions of sale shall apply exclusively to all contracts concluded between the buyer and us for deliveries and services, including those arising from future business relationships. Deviating conditions of the buyer, which we do not expressly acknowledge, are non-binding for us even if we do not expressly contradict them. Further agreements or supplements must be made in writing. Our terms of sale apply only to entrepreneurs (§ 14 BGB).

2 Our offers are subject to confirmation and non-binding.

We reserve the property rights, copyrights and other industrial property rights to cost estimates, drawings and other documents; they may only be made accessible to third parties with our written consent.

**II. time of delivery and performance, reservation of self-supply, assumption of risk and partial deliveries**

1 Agreed delivery periods shall commence at the point in time at which the purchaser has fulfilled any advance performance obligations.

2 The delivery period shall be deemed to have been observed if we have informed the purchaser that the goods are ready for dispatch.

3. correct and punctual self-supply remains reserved.

4 We shall be liable in the event of delay (a) and impossibility (b) of delivery/service in cases of intent or gross negligence in accordance with the statutory provisions. In cases of simple negligence, however, our liability shall be limited to the foreseeable damage typical of the contract if none of the exceptional cases listed in sentence 5 of this clause applies. In all other respects, our liability

a) is limited to 5 % of the purchase price due to delay in performance and to 50 % of the purchase price for damages instead of performance,

b) limited to compensation for damages and reimbursement of futile expenses due to impossibility of performance to a total of 50% of the purchase price.

Further claims of the buyer due to delay or impossibility of delivery are excluded. This limitation shall not apply in cases of intent, gross negligence or injury to life, limb or health. The right of the buyer to withdraw from the contract remains unaffected.

5. delivery is ex works and at the risk of the buyer.

6. we are entitled to partial deliveries and partial performances at any time, as far as this is reasonable for the buyer.

**III. scope of delivery, price, payment, due date**

Quantity tolerances of up to  $\pm 10\%$  of the agreed scope of delivery shall be deemed to be in accordance with the contract. The purchase price is based on the quantity actually delivered.

In addition to the total price stated in the confirmation of sale, value added tax shall be charged at the respective statutory rate.

3 The remuneration is due in full upon delivery. The buyer shall be in default without further notice if he has not paid. Bills of exchange and cheques shall only be accepted upon corresponding agreement and shall not be deemed payment until they have been honoured.

In the event of default in payment, interest at the rate of 1% per month from the due date shall be charged. We reserve the right to assert further damages caused by default.

5. the exercise of a right of retention is denied to the buyer, as far as this is not based on the same contractual relationship. The buyer shall only be entitled to set-off with counter-claims - even if notices of defects are asserted - if these are undisputed or have been legally established.

**IV. retention of title**

The delivered goods shall remain our property until full payment of all our claims, including future or conditional claims against the purchaser arising from the mutual business relationship. In the case of a current account, the reserved goods serve as security for our respective balance claim.

Any processing or treatment of the reserved goods shall be carried out by the purchaser on our behalf without any obligation arising for us therefrom. If the reserved goods are processed, combined, mixed or blended with other items not belonging to us, the buyer hereby transfers to us co-ownership of the new combined or combined item in the ratio of the value of the reserved goods to the other processed, mixed, blended or combined items in order to secure our claims with the proviso that the buyer shall store the new item for us free of charge. The "value of the reserved goods" shall be understood to mean the purchase price charged by us to the purchaser.

The buyer may - as long as he is not in default of payment - resell the goods in the ordinary course of business, but may not pledge them or assign them as security. The buyer's claims from the resale of the reserved goods including all ancillary rights are hereby assigned to us as security for our claims. If the reserved goods are resold together with other goods, whether without or after processing, mixing, combining or blending, the advance assignment agreed above shall only apply to the value of the reserved goods which have been resold together with the other goods. If the assigned claim is included in a current account, the buyer's claim from the current account in the corresponding amount shall be deemed

assigned to us. In the case of partial payments by the customer, the assignment shall remain in effect until complete payment by the customer.

4 The purchaser is entitled to collect the assigned claims until revoked. We are entitled to revoke this authorisation in the event of default in payment on the part of the purchaser.

5. the buyer must insure the reserved goods at his own expense against the usual risks with a reputable German insurance company and prove this to us on request. If necessary, we are entitled to take out the insurance at the expense of the buyer. The buyer hereby assigns to us his claim to the sum insured; with regard to the scope of the assignment, the above provisions in Section 3 shall apply mutatis mutandis. The buyer must also ensure that the reserved goods can be identified as our property and separated out at any time and in all stages of further processing. The same applies to the claims assigned to us.

The buyer is obliged to treat the reserved goods carefully, to grant us access to the reserved goods at any time and to provide us with information about their scope and whereabouts. If the purchaser is in default of payment, he shall provide us with all information requested upon request, notify his customers of the transfer of claims, and hand over to us any customer bills and cheques in this respect. After setting a reasonable deadline, we have the right to retrieve the reserved goods at the customer's expense. If we retrieve the reserved goods, this is a withdrawal from the contract. We are entitled to utilise the reserved goods after taking them back. After deduction of a reasonable amount for the costs of realisation, the proceeds of realisation shall be set off against the amounts owed to us by the purchaser.

7. the buyer has to inform us immediately about the access of third parties to the reserved goods in our ownership or co-ownership and the claims assigned to us and to ward off these accesses according to his possibilities.

8. we are obliged to release the securities to which we are entitled insofar as the realisable value of our securities exceeds the claims to be secured by more than 10 %, whereby we are free to select the securities to be released.

**V. shortcomings**

Our buyer shall give us the opportunity to perform subsequent performance within a reasonable period of time, at our option either by remedying the defect, delivering a defect-free item or producing a new work.

If the supplementary performance finally fails, cannot be expected of us or the buyer or is only possible with disproportionate costs, the buyer concerned can withdraw from the contract or reduce the agreed price without prejudice to any claims for damages.

3. claims of the buyer against us for reimbursement of the expenses necessary for the purpose of subsequent performance, in particular transport, travel, labour and material costs, shall be excluded insofar as the expenses increase because the object of the delivery/service was subsequently taken to a location other than that of the buyer's branch office, unless the transfer corresponds to the intended use of the object of the delivery/service.

4. legal recourse claims of the buyer against us only exist insofar as these customers have not made any agreements with their customers that go beyond the legal claims and rights based on defects. The scope of the right of recourse of these customers against us shall also be governed by the foregoing paragraph 3. mutatis mutandis.

(5) In the event of notices of defects, the Buyer may withhold payments only to an extent which is in reasonable proportion to the defects notified.

6 The limitation period for material defects and defects of title shall be 1 year and shall commence upon transfer of risk. This shall not apply if and insofar as longer periods apply pursuant to §§ 438 Para. 1 No. 2, 479 Para. 1, 634 Para. 1 No. 2, 651 BGB, the defect was fraudulently concealed or one of the cases of liability specified below under Section VI Para. 1 exists.

7. we deliver used objects - subject to the following paragraph VI - to the exclusion of any liability for material defects and defects of title.

8 Our obligation to pay damages is governed by the following Section VI.

9 The above provisions do not imply a reversal of the burden of proof to the detriment of the purchaser.

**VI Liability**

1. claims for damages and reimbursement of expenses (hereinafter referred to as "claims for damages") of the buyer, irrespective of the legal basis, are excluded, unless they are based on the provisions of the Product Liability Act, an intentional or grossly negligent breach of contractual or statutory obligations by us, on damage to health or bodily injury of the buyer as a result of a breach of duty for which we are responsible, the assumption of a guarantee for the existence of his property or on the breach of essential contractual obligations by us. Essential to the contract are the

obligations, the fulfilment of which enables the proper performance of the main obligation incumbent upon us at all and on the observance of which the purchaser regularly relies or may rely.

In the event of a breach of material contractual obligations by us, the Buyer's claim for damages against us shall be limited to the foreseeable damage typical for this type of contract, unless we are liable for an intentional or grossly negligent breach of duty, for damage to the Buyer's health or bodily injury, or for the existence of a characteristic due to the assumption of a guarantee. Essential to the contract/foreseeable is the damage, the occurrence of which is typically to be expected on the basis of the violation of the respective essential contractual obligation.

3 A breach of duty by us is equivalent to a breach of duty by our legal representative or vicarious agent.

Section 4 (V) (9) shall apply accordingly.

#### **VII Place of performance, place of jurisdiction, applicable law**

The place of performance for all deliveries and services to be rendered by us shall be Hamburg.

The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship with the purchaser - including disputes arising from documents, bills of exchange or cheques - shall be Hamburg. However, we shall remain entitled - at our discretion - to sue the buyer before the court having jurisdiction over his place of business.

3 The law of the Federal Republic of Germany shall apply, to the exclusion of the Free Nation Agreement on Contracts for the International Sale of Goods.

4. in the case of translations of these terms and conditions into a language other than German, the German language of these terms and conditions shall prevail in the event of interpretation doubts, gaps or ambiguities.

#### **VIII. partial invalidity**

If individual provisions of a contract with a purchaser concerning deliveries and services are or become invalid, in which case these General Terms and Conditions of Sale form an integral part of the contract, the validity of the remaining provisions of the relevant contract shall not be affected thereby. Instead of the invalid provision, we shall agree with the purchaser on a provision which regulates the economic intent of the invalid provision in its entirety or - insofar as this is not legally possible - to the greatest extent legally effective.