

General Terms and Conditions of Delivery of ESGE AG, CH-9517 Mettlen

I. General provisions

1. These provisions shall apply exclusively to the legal relations between the Supplier and the Customer in connection with the deliveries and/or services of the Supplier (hereinafter: deliveries). The general terms and conditions of business of the Customer shall only apply if and to the extent the Supplier has expressly agreed to them **in writing**. Mutual, concordant written declarations shall be decisive for the scope of the deliveries.

2. Partial deliveries shall be permissible if they are reasonable for the Customer. In addition, supplements and/or amendments of an order already placed shall be possible; however, an appropriate administrative fee and the additional costs incurred as a result (special trips, express consignments, etc) must be paid by the Customer.

3. The term "claims for damages" in these general terms and conditions shall also include claims to the reimbursement of wasted expenditure.

II. Prices, terms of payment and offsetting

1. The prices shall be ex works excluding packaging plus the currently valid statutory sales tax.

2. Unless expressly otherwise agreed in writing, the Customer shall bear all ancillary costs such as travel and transport costs in addition to the agreed payment.

3. Payments are to be made free Supplier's paying office. Should payment be made in foreign currency, the daily exchange rate of the value date credit entry shall apply and the Customer shall be obliged to settle any differences.

4. The Customer may only offset those claims that are undisputed or have been established as legally binding.

III. Reservation of Title

1. The delivery items (reserved goods) shall remain the property of the Supplier until fulfillment of all claims to which it is entitled against the Customer from the business relationship.

2. As long as the retention of title exists, the Customer shall be prohibited from pledging or transfer by way of security and resale only permitted to retailers in the normal course of business and only on the condition that the reseller receives payment from its customer or makes the reservation that title only passes to the customer when the latter has met its payment obligations.

3. In the event of attachments, seizures or other disposals or interventions of third parties, the Customer must inform the Supplier immediately.

4. In the event of breaches of duty on the part of the Customer, especially in the case of the payment

default, the Supplier shall in addition to recovery also be entitled to rescission following the fruitless expiry of an appropriate time limit set for the Customer for payment; this shall not affect the statutory provisions on the dispensability of setting a time limit. The Customer shall be obliged to surrender the goods. The recovery of property or assertion of the retention of title or attachment of the goods subject to reservation of title by the Supplier shall not constitute rescission of the agreement unless the Supplier has expressly declared this in writing.

IV. Delivery periods, default

1. Observance of the periods for deliveries shall presume punctual receipt of all documents to be supplied by the Customer and any approvals required as well as observance of the agreed terms of payment and other obligations by the Customer. Should these conditions not be met on time, the periods shall be extended appropriately. The delivery date agreed in the order shall represent an approximate time period, which can cover a time window of +/- 10 days. Only upon expiry of another 10 days from the delivery date agreed in the order shall the delivery date be deemed to have been exceeded. If advance payment is agreed, delivery shall be made to the Supplier at the earliest within ten days of the value date of payment unless a later delivery date than ten days after the value date has been agreed. In this case, the general rule shall apply (+/- ten days).

2. Should non-observance of the periods be attributable to force majeure, e.g. mobilization, war, unrest, environmental catastrophes or similar events, such as strike, lockout, the periods shall be extended appropriately. The same shall apply to delayed or incorrect delivery to the Supplier by its own subcontractors.

3. Should the Supplier default, the Customer may - if it can substantiate that it suffered a loss as a result - demand compensation for each complete week of default of in each case 0.5 %, at the most, however, 5 % of the price for the portion of the deliveries which could not be put into appropriate operation as a result of the delay.

4. Both claims for damages of the Customer on account of delayed delivery as well as claims for damages in lieu of performance, which go beyond the limits mentioned in Section 3, shall be excluded in all cases of delayed delivery, including following expiry of any deadline set for the Supplier for delivery. This shall not apply in the event of mandatory liability due to intent, gross negligence or on account of injury to life, limb or health. The Customer may only rescind the agreement within the framework of the statutory provisions if the Supplier is responsible for the delivery delay.

5. The Customer shall be obliged at the request of the Supplier to declare within an appropriate period whether it will rescind the agreement on account of the delay or insist on delivery.

6. Should dispatch or delivery be delayed at the request of the Customer by more than a month after notification of readiness to dispatch, the Customer may be charged a storage fee amounting to 0.5 % of the price of the delivery items, at the most, however, a total of 5%, for

each additional month commenced. The contractual parties shall remain at liberty to demonstrate higher or lower storage costs.

V. Passage of risk

1. In the case of overland deliveries the risk shall pass to the Customer, even in the case of carriage-free delivery, once they have been dispatched or collected. At the request and expense of the Customer, deliveries shall also be insured by the Supplier against the customary transport risks.

2. In the case of overseas deliveries the Incoterms 2000 shall apply in addition and the goods accordingly be dispatched FOB at the Customer's expense.

VI. Receipt

The Customer may not refuse receipt of deliveries on account of minor defects.

VIII. Material defects

The Supplier shall be liable for material defects as follows:

1. All those parts or performances which possess material defects must be repaired, redelivered or reperformed free of charge at the discretion of the Supplier if their cause already existed at the time the risk passed.

2. Claims to subsequent performance shall become statute barred after 12 months from the beginning of the statutory period of limitation; the same shall apply to rescission and abatement.

3. Notices of defects on the part of the Customer must be made immediately in writing (letter, fax, e-mail, telex). The defects complained of must at all events be documented with pictures (photos, etc); otherwise the Customer may not assert any warranty claims. In addition, no taking back of the goods shall be agreed, but only possible compensation in the form of damages.

4. In case of notices of defects, no payments of the Customer may be withheld.

5. The Supplier must be given the opportunity for subsequent performance within an appropriate period of notice.

6. Should the subsequent performance be unsuccessful, the Customer may rescind the agreement or reduce the payment.

7. Warranty claims shall not exist in the event of an only insignificant deviation from the agreed quality, an only insignificant impairment of the serviceability, natural wear or damage arising after the passage of risk as a result of incorrect or negligent handling, excessive loading or on account of special external events not assumed according to the agreement. If improper changes or repair work are carried out by the Customer or third parties, no warranty claims shall exist for these and the consequences resulting therefrom.

8. Claims of the Customer on account of the expenses required for the purpose of subsequent performance, especially transport, travel, work and material costs shall be excluded if the costs increase because the delivery item was later brought to a different location than the branch of the Customer, unless the move corresponds with its contractual use.

9. Rights of recourse of the Customer against the Supplier shall only exist if the Customer did not reach any arrangements with its buyers going beyond the statutory warranty claims.

10. Claims for damages of the Customer on account of a material defect shall be excluded. This shall not apply in the event of intentional concealment of the defect, non-observance of a quality guarantee, injury to life, limb, health or freedom and in the event of intentional or grossly negligent a breach of duty on the part of the Supplier. The above provisions shall not entail a change in the burden of proof to the detriment of the Customer. Claims of the Customer on account of a material defect that go further or are different to those regulated in Section 1 shall be excluded.

VIII. Industrial property rights and copyrights; defects of title

1. Unless otherwise agreed, the Supplier shall be only obliged to render delivery in the country of the delivery location free of industrial property rights and copyrights (hereinafter: industrial property rights).

2. Claims of the Customer shall be excluded if it is responsible for the infringement of industrial property rights.

3. Claims of the Customer shall furthermore be excluded if the infringement of industrial property rights was caused by a special instructions issued by the Customer, by an application not foreseeable by the Supplier or as a result of the delivery being modified by the Customer or being used together with products not delivered by the Supplier.

4. In the event of other defects of title the provisions of Section VII above shall apply mutatis mutandis.

5. Further claims of the Customer or claims other than those regulated here under Section VIII against the Supplier and its vicarious agents on account of defects of title shall be excluded.

IX. Impossibility; contractual amendment

1. Should the delivery be impossible, the Customer shall be entitled to demand damages unless the Supplier is not responsible for the impossibility. However, the claim for damages of the Customer shall be restricted to 10 % of the value of that portion of the delivery which cannot be put into appropriate operation on account of impossibility. This limitation shall not apply in the event of mandatory liability due to intent, gross negligence or on account of injury to life, limb or health.

2. Should unforeseen events as defined in Section IV 2 above considerably alter the economic importance or contents of the delivery or have a considerable effect on

the Supplier's operations, the agreement shall be amended appropriately in good faith. If this is not economically justifiable, the Supplier shall be entitled to rescind the agreement. Should it wish to make use of this right of rescission, it must inform the Customer of this immediately after recognizing the significance of the event, even if an extension of the delivery period had initially been agreed with the Customer.

X. Other claims for damages; period of limitation

1. Claims for damages of the Customer on whatever legal grounds, especially on account of infringement of duties resulting from the contractual relationship and for tort shall be excluded.

2. This shall not apply in the event of mandatory liability, e.g. according to the Product Liability Act, in cases of intent, gross negligence, on account of injury to life, limb or health.

3. Should the Customer be entitled to claims for damages, these shall become statute barred upon expiry of the period of limitation applicable according to Section VIII 2. The same shall apply to claims of the Customer in connection with measures for averting damage (e.g. recall actions). In the case of claims for damages according to the Product Liability Act, the statutory period of limitation regulations shall apply.

XI. Legal venue and applicable law

1. The sole **legal venue** in the case of all disputes arising directly or indirectly from the contractual relationship shall be the **registered office of the Supplier**. However, the Supplier shall also be entitled to bring action at the registered office of the Customer.

2. **Swiss law** shall apply to the legal relationships in connection with this Agreement to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

XII. Binding force of the agreement

The remaining sections of the Agreement shall remain legally binding even in the event of invalidity of individual provisions.

Mettlen, January 2010