

## **General Terms and Conditions of Sale, Delivery and Payment (status: July 2020)**

### **1. Scope of application**

- (1) These General Terms and Conditions of Sale, Delivery and Payment (hereinafter referred to as "General T&Cs of Sale and Delivery") of EUROPIPE GmbH (hereinafter referred to as "EUROPIPE" or "we") apply exclusively to companies within the meaning of Section 14 *BGB* [German Civil Code] i.e. natural persons or legal entities, which, in respect of the purchase of the goods or services, are acting in the performance of their commercial or independent professional activities (hereinafter referred to as "Customer").
- (2) The General T&Cs of Sale and Delivery apply to all deliveries and services by us to the Customer including suggestions, advice and other ancillary services.
- (3) In relation to the Customer's general terms and conditions (General T&Cs), our General T&Cs of Sale and Delivery shall apply exclusively. General Terms and Conditions of Purchase and other General T&Cs of the Customer are herewith excluded. This shall also apply if we do not object again to the terms and conditions after receipt or other reference.

### **2. Quotation and conclusion of contracts**

- (1) Our quotations are subject to change and are not binding. If the Customer places a delivery order based on quotations subject to change, a contract shall be concluded, also in day-to-day business, only upon the written order confirmation of EUROPIPE (sufficient also by email or telefax) if the Customer requests such confirmation. In all other cases, the contract shall be concluded by delivery of the goods resp. by provision of the service. If an order confirmation is provided by us, this alone shall govern the content of the contract, in particular the scope of delivery and date of delivery.
- (2) Prices and performance data and other declarations or assurances shall be binding for us only if they have been made or confirmed in writing (sufficient by email or telefax).
- (3) In the case of deliveries to other EU Member States, the Customer shall be obliged to disclose its VAT identification number to us prior to conclusion of the contract.

### **3. Scope of delivery and service, place of performance**

- (1) Any documents, drawings, details of weight, samples etc. enclosed with our quotation are only approximately authoritative. In particular, these are neither a guarantee nor is hereby a procurement risk assumed, unless this is expressly indicated in writing as "guaranteed by law" resp. "assumption of a procurement risk". Any reference to standards and similar technical regulations as well shall not indicate a property of our products, unless this is expressly indicated as a "property of the product".
- (2) We are only be obliged to deliver and supply from our own stock (obligation to deliver from stock). Assumption of a procurement risk or a procurement guarantee is also not based solely on our obligation to deliver an item which is defined solely by its class.
- (3) Partial deliveries are permitted, unless this is unreasonable for the Customer.
- (4) Estimates of cost, drawings and other documents provided by us shall remain our property and copyright. They may not be made accessible to third parties without our prior consent.
- (5) We reserve the right for our delivery or service due according to the contract to be performed by third parties.
- (6) In the absence of other agreement, place of performance for the delivery resp. service is the place of EUROPIPE's delivery works or warehouse, for the Customer's payment obligation the place of the bank account stated on our invoice.

### **4. Price, proof of export, payment, security**

- (1) Unless otherwise agreed, prices are ex works and subject to VAT at the respectively applicable rate. Payment must be made within 14 days of invoicing and delivery in such a way that the amount is at our disposal on the due date.
- (2) The Customer shall be invoiced separately for customs duties, consular fees, freight, insurance premiums and other costs connected with the delivery, provision of the service or other processing of the contract.

(3) If a Customer based outside the Federal Republic of Germany or its representative collects goods and conveys or sends them abroad, the Customer must prove this by submission of documentary evidence, which satisfies the requirements of VAT law of the Federal Republic of Germany. If such proof is not provided within 30 days of handing over the goods, the Customer must pay the VAT on the invoice amount according to the VAT rate applicable to deliveries within the Federal Republic of Germany.

(4) The Customer may set off only against undisputed claims or claims recognised by declaratory judgment. The Customer shall be entitled to rights of retention only if they are based on the same contractual relationship. We shall have the right to avert the exercise of a right of retention by provision of security, also by guarantee.

(5) If the Customer defaults in payment or our claims are jeopardised as a result of not only a negligible deterioration in the Customer's credit rating with recognised rating agencies such as Creditreform, Moody's, Fitch etc., we shall have the right to require payment of our claims or require securities. We shall then also have the right to revoke the collection authorisation pursuant to Art. 12 (7). Furthermore, we shall be permitted to carry out deliveries still outstanding only against advance payment or against provision of securities.

(6) Statutory provisions concerning default in payment remain unaffected. The right is reserved to assert further damage, in particular additional expenses in relation to financing etc.

## 5. Intercompany settlement

(1) We have the right, in conformity with all companies belonging to the Group of Salzgitter AG or DHS - Dillinger Hütte Saarstahl AG, of set-off against all claims, to which we, Salzgitter AG, DHS - Dillinger Hütte Saarstahl AG or the companies in which Salzgitter AG or DHS - Dillinger Hütte Saarstahl AG holds an interest directly or indirectly, are entitled against the Customer. Further, we have the right of set-off against all claims, to which the Customer is entitled, for whatever legal reason, against us, against Salzgitter AG, against DHS - Dillinger Hütte Saarstahl AG or their Group companies referred to in sentence 1. This shall also apply if cash payment has been agreed by one party or payment by other means has been agreed by the other party in consideration of performance.

(2) We shall provide a complete list of the Group companies of Salzgitter AG and DHS - Dillinger Hütte Saarstahl AG stated in paragraph (1) upon request.

(3) Securities, which exist for us or one of the above-mentioned companies, shall be liable respectively for the claims of all such companies.

## 6. Deviations, tolerances

Deviations in dimension, weight and quality are admissible within the framework of applicable DIN standards or tolerances customary in the trade but not more than 8 %, unless otherwise agreed.

## 7. Packaging

Unless otherwise agreed, the goods shall be delivered without packaging, in particular not protected against rust. If packaging has been expressly agreed, it shall be invoiced to the Customer and shall not be taken back. We can instead require packaging to be returned, subject to a usage charge and deposit.

## 8. Acceptance

(1) If acceptance has been agreed, this shall take place at the delivery works, unless otherwise agreed. It must be carried out immediately after notification of readiness for acceptance. We shall bear the acceptance costs on the works side. The remaining costs incurred in relation to acceptance or charged to us by a third party shall be borne by the Customer.

(2) If specific quality regulations have been agreed, the Customer shall be obliged to accept the goods upon our request.

(3) If acceptance does not take place in due time or in full through no fault of our own, we shall have the right to carry out the delivery without acceptance or to store the goods at the Customer's expense and risk.

## 9. Passing of risk, shipment

(1) Unless otherwise agreed, the means of transport and transport route shall be left to our discretion. In such case, we shall determine the freight forwarder and/or the carrier.

(2) The risk of accidental loss or accidental deterioration of the goods shall pass to the Customer upon handover by us to the freight forwarder, carrier or third parties otherwise designated to carry out

shipment. If shipment is delayed due to circumstances for which the Customer is responsible or the shipment is made at the Customer's request at a later date than the agreed delivery date, the risk shall pass to the Customer from the date of notification of readiness for shipment.

**(3)** The Incoterms as amended when the contract is concluded shall apply to the interpretation of the commercial terms.

**(4)** If the loading or carriage of the goods is delayed for a reason for which the Customer is responsible, we shall have the right to store the goods at our reasonably exercised discretion at the Customer's expense and risk, to take all measures deemed suitable in order to preserve the goods and to invoice the goods. Our claim for payment shall be due for payment in such case 14 days after the invoice date. This shall also apply if goods notified as being ready for shipment are not called off within four days. Statutory provisions concerning default in the acceptance of delivery remain unaffected.

**(5)** We reserve the right to ship the delivery from a foreign works or warehouse or from a foreign sub-supplier.

## **10. Delivery time, delay in delivery**

**(1)** Specified delivery times are not binding unless otherwise agreed in writing. If delivery dates and periods are not binding or approximate (ca., about etc.), we shall use our best efforts to comply with them. Delivery periods agreed as binding according to the foregoing shall commence upon the date of our order confirmation but not before all necessary details of the order have been clarified in full. The latter also applies to delivery dates.

**(2)** If the Customer fails to fulfil its contractual obligations, also obligations to cooperate or accessory obligations, (such as opening a letter of credit, providing domestic or foreign certificates, making an advance payment or the like) in due time, we shall have the right to postpone our delivery periods and dates, notwithstanding our rights arising from the Customer's default, according to the requirements of our production processes appropriately but at most by the duration of the Customer's default in fulfilling the above-mentioned obligations. In individual cases, postponement of the delivery dates and periods beyond the duration of default as well shall be admissible, where there are just grounds to do so, without claims of the Customer being able to be derived from this. There are just grounds in particular where the delayed fulfilment of obligations to cooperate result in a conflict with other projects/orders in the production schedule or otherwise already scheduled. We shall notify the Customer of this immediately and implement the production/delivery for the Customer as promptly as possible, taking into account such conflicting projects/orders.

**(3)** If we do not receive deliveries or services from our sub-suppliers for us to provide deliveries or services due from us under the contract, despite proper and adequate stocking in terms of quantity and quality under our delivery or service agreement with the Customer or they are incorrect or not in due time, for reasons for which we are not responsible, or events of force majeure occur of not insignificant duration (i.e. of longer than 14 calendar days), we shall notify the Customer in due time in writing or text form. In such case, we shall have the right to postpone the delivery or service for the duration of the obstruction or to rescind the contract in whole or in part for the part not yet fulfilled if we have met our foregoing duty to provide information and have not assumed a procurement risk. Events of force majeure are strikes, lock-outs, official intervention, energy shortages and shortages of raw materials, transport bottlenecks through no fault of our own, company obstructions through no fault of our own, e.g. due to fire, water and damage to machinery, pandemics, epidemics and any other obstructions which, when considered objectively, were not culpably caused by us.

**(4)** If delivery periods are not complied with, the Customer shall be entitled to the rights arising from Section 323 *BGB* only if we are in default and the Customer has set us a reasonable period for delivery which, insofar by way of derogation from Section 323 *BGB*, is connected with the declaration that the Customer refuses acceptance of performance after expiry of the period. After expiry of the period without effect, entitlement to fulfilment shall be excluded. The right of rescission shall in principle cover only the part of the contract not yet fulfilled. If partial deliveries provided are unusable for the Customer, the Customer shall also have the right of rescission in respect of such partial deliveries.

**(5)** The Customer shall be entitled to further rights arising from default in delivery, especially claims for damages, only according to Art. 13.



## 11. Quality and claims for defects

(1) The quality of and absence of defects in our goods under the contract is determined exclusively according to the express and binding agreements concerning quality/properties and quantity of the ordered goods at the time the risk passes.

(2) For goods sold as downgraded material - e.g. so called Ila material - we shall not be responsible for the specified faults and for such faults, which the Customer must normally expect with such material.

(3) No warranty is assumed for a specific purpose of application or a specific suitability, unless this was expressly agreed. In the absence of other agreement, the risk of suitability and use is solely the responsibility of the Customer.

(4) We are not liable for deterioration or loss or improper handling of the goods after the risk passes.

(5) Content of the agreed specification and any expressly agreed use do not establish any guarantee. The assumption of a guarantee shall require express written agreement.

(6) The Customer shall inspect the goods immediately upon receipt if this is possible in the ordinary course of business and, if a defect is found, shall notify us immediately in writing. By negotiating on any notices of defects, we shall not waive the objection that the notice was not in due time, was unfounded in fact or otherwise insufficient. If the Customer fails to provide this notice, the goods shall be deemed approved, unless a defect is concerned, which was not recognisable during the inspection. Section 377 et seq. *HGB* [German Commercial Code] shall furthermore apply. Obvious damages sustained during transport or other defects already identifiable upon delivery must also be confirmed by the deliverer's signature on the respective transport document when delivery is accepted. The Customer shall ensure that a corresponding confirmation is provided. After agreed acceptance has been carried out, notice of defects, which could have been determined during that acceptance, is excluded.

(7) In the case of complaints, the Customer must give us the opportunity immediately to inspect the goods subject to complaint. The goods subject to complaint or a sample of the same shall be provided to us on request at our expense. Where complaints are not justified, we reserve the right to charge the Customer freight and cargo handling costs as well as the cost of inspection at customary market prices.

(8) In the case of a material defect, we shall, at our option, taking into account the Customer's interests, render supplementary performance either by replacement delivery or by rectification. If supplementary performance is not successfully performed by us within a reasonable period, the Customer shall set us a further reasonable period for supplementary performance, unless we have expressly and conclusively refused supplementary performance or the setting of a further period is unreasonable for the Customer, after expiry of which, without effect, the Customer can either reduce the purchase price of rescind the contract. The Customer shall be entitled to further rights based on defects only according to Art. 13.

(9) Where a defect of title exists, we shall be entitled to the right of supplementary performance through remedy of the defect of title within a reasonable period, which as a rule shall be at least two weeks as of receipt of the notice of defect. Paragraph (8) above shall otherwise apply *mutatis mutandis*.

(10) The period for limitation of claims due to material defects of goods, notwithstanding Sections 478, 479 *BGB* and unless otherwise expressly agreed between the parties, is:

a) three years for goods that have been used for a building according to their customary use and have caused its defectiveness; and

b) otherwise one year.

(11) Periods stipulated in the above paragraph shall commence upon the passing of risk pursuant to Art. 9 (2).

(12) If the Customer is entitled to rights of recourse against us pursuant to Section 478 *BGB*, these shall be limited to the legal scope of the third-party warranty claims asserted against the Customer. The Customer is obliged to defend against such claims, where possible.

(13) We provide warranty for the rectification or replacement delivery in the same way as for the original delivery. Corresponding claims shall become statute-barred:

a) three years after completion of rectification or delivery of the replacement but in any case not later than 48 months after the original delivery stated in sentence 1 for goods that have been used for a building according to their customary use and have caused its defectiveness;

b) otherwise one year after completion of rectification or delivery of the replacement but in any case not later than 18 months after the original delivery stated in sentence 1.

## 12. Retention of title, assignment of claims

(1) The goods supplied shall remain our property (goods subject to retention of title) until satisfaction of all claims, especially also the respective balance claims, to which we are entitled against the Customer within the scope of the business relationship.

(2) Goods subject to retention of title shall be treated and processed for us as manufacturer within the meaning of Section 950 *BGB* but without obligation on our part. Treated and processed goods are deemed goods subject to retention of title within the meaning of para. (1).

(3) If goods subject to retention of title are processed, combined and mixed with other goods by the Customer, we shall be entitled to co-ownership in the new article in the proportion of the invoice value of the goods subject to retention of title to the invoice value of the other goods used. If our property ceases to exist as a result of combining, mixing or processing, the Customer shall herewith already transfer to us the property resp. expectant rights in the new stock or article, to which the Customer is entitled, to the extent of the invoice value of the goods subject to retention of title, in the event of processing in the proportion of the invoice value of the goods subject to retention of title to the invoice value of the other goods used, and shall hold the goods subject to retention of title in safekeeping free of charge for us. Our co-ownership rights shall be deemed goods subject to retention of title within the meaning of para. (1).

(4) The Customer may resell goods subject to retention of title only in the normal course of business under the Customer's normal terms and conditions and as long as the Customer is not in default, provided that the Customer has agreed retention of title with its customer and that the claims from the resale according to para. (5) and (6) pass to us. The Customer shall not have the right to make any other disposals of goods subject to retention of title. The use of goods subject to retention of title to fulfil contracts for work and contracts which involve the delivery of goods to be manufactured or produced ("contract for work and materials") is also deemed resale.

(5) The Customer's claims arising from the resale of goods subject to retention of title are herewith already assigned to us; if the resale claim is transferred to a current account, this also applies to the amount of the respective balance claims. The assigned claims serve as security to the same extent as the goods subject to retention of title within the meaning of para. (1).

(6) If goods subject to retention are resold by the Customer together with other goods not supplied by us, the claims arising from the resale resp. the respective balance claims shall be assigned to us in the proportion of the invoice value of the goods subject to retention of title to the invoice value of the other goods. If goods are resold, in which we have co-ownership shares pursuant to para. (3), a portion of the claim corresponding to our co-ownership share shall be assigned to us.

(7) The Customer has the right to collect claims arising from resale or balance claims unless we revoke the collection authorisation according to the provisions of these General T&Cs of Sale and Delivery. At our request, the Customer shall be obliged to notify its customers immediately of the assignment to us, unless we do so ourselves, and to provide us with the information and documents required for collection.

(8) The Customer shall not have a right under any circumstances otherwise to assign the claims. This also applies to factoring transactions; such transactions are also not permitted to the Customer by reason of the collection authorisation. We are, however, prepared in individual cases to consent to factoring transactions if the equivalent value from this definitively accrues to the Customer and satisfaction of our claims is not jeopardised.

(9) The Customer must notify us immediately of any seizure or other impairments by third parties.

(10) If the value of existing securities exceeds the secured claims in total by more than 10 percent, we shall be obliged in this respect at the Customer's request to release securities at our discretion.

(11) If retention of title is not valid according to the law of the territory where the goods are located, security corresponding to retention of title in that territory shall be deemed agreed. If the Customer's cooperation is necessary for such rights to come into existence, the Customer shall take all measures required to establish and maintain such rights.

## 13. General limitation of liability

(1) We shall not be liable, in particular not for claims by the Customer for damages or reimbursement of expenses, for whatever legal reason, and/or in the case of breach of duty arising from the obligation and from tortious acts.

(2) The above exclusion of liability shall not apply:

- in the case of own intentional or grossly negligent breach of duty and intentional or grossly negligent breach of duty by legal representatives or vicarious agents;

- in the case of violation of material contractual obligations; material contractual obligations are obligations, the fulfilment of which defines the contract and on which the Customer may rely;
- in the event of injury to life, limb and health, also caused by legal representatives or vicarious agents;
- in the case of default if delivery and/or service by a fixed date was agreed;
- where we have assumed a guarantee for the quality of the goods or the existence of an outcome of performance or a procurement risk;
- in the case of liability under the *Produkthaftungsgesetz* [German Product Liability Act] or other mandatory statutory basis for liability.

**(3)** If we or one of our vicarious agents are(is) responsible only for slight negligence and none of the cases in Art. 13 (2) in bullet points 1, 3, 4, 5 and 6 above exist, our liability shall be limited in amount, also in the case of violation of material contractual obligations, to the foreseeable damages typical for the contract at the time the contract was concluded.

**(4)** Any further liability of EUROPIPE is excluded. Liability is excluded in particular for damage incurred exclusively as a result of unsuitable or inappropriate use, especially non-compliance with instructions for use enclosed with or affixed to the goods, or as a result of changes, repairs or attempts at repair by the Customer, a customer of the Customer or third parties commissioned by the Customer or its customers.

**(5)** Exclusion resp. limitation of liability according to Art. 13 (1) to (4) above and Art. 13 (6) shall apply to the same extent for the benefit of the executive and non-executive employees and other vicarious agents as well as the sub-contractors of EUROPIPE.

**(6)** If the Customer is entitled to claims for damages according to this Art. 13, these shall become statute-barred upon expiry of the limitation period applicable to warranty claims for defects pursuant to Art. 11 (10) and (11) of these General T&Cs of Sale and Delivery. Art. 13 (2) of these General T&Cs of Sale and Delivery shall apply *mutatis mutandis*.

**(7)** There is no connection between the reversal of the burden of proof and the foregoing provisions.

#### **14. Written form**

All agreements, collateral agreements, assurances and contract amendments shall only be valid when given in writing. This shall also apply to waiver of the written form requirement. The precedence of an individual, also verbal, agreement (Section 305b *BGB*) remains unaffected.

#### **15. Place of jurisdiction, applicable law**

(1) Any disputes arising from and in connection herewith shall be settled exclusively before a competent Düsseldorf court of law but we can also bring an action against the Customer before the courts at its place of general jurisdiction.

(2) All legal relations between ourselves and the Customer shall be governed exclusively by the law of the Federal Republic of Germany, to the exclusion of the UN Sales Convention.