

# General terms and conditions of EPS GmbH

## 1. General

(1) These terms and conditions apply to companies, legal entities under public law and special entities under public law (hereinafter: Client).

(2) Our deliveries/services are subject to the following terms and conditions. This also applies if we do not expressly invoke these conditions in our future business relationship. Any deviating terms and conditions are only valid if they have been expressly acknowledged by us in writing. The Client agrees to the validity of our terms and conditions at the latest by acknowledging receipt of partial deliveries/services, even if they have excluded the validity of deviating terms and conditions in standard form in their terms and conditions.

## 2. Quotations, order confirmation, consultation

(1) Our quotations are non-binding. Orders and all other agreements are only binding for us following our written confirmation. The delivery note or sales invoice is also valid as confirmation. Any changes to the design of the products which become technically or legally necessary and are acceptable for the Client are also permitted following conclusion of the contract. As a supplement to the contract, delivery is made in accordance with the expressly agreed Incoterms 2010. If an Incoterm is not expressly agreed, delivery will be made ex-works (FCA) Incoterm 2010.

(2) Consultancy services are complimentary additional services which we are not obligated to provide unless a separate additional order against payment is placed.

## 3. Scope of supply, delivery time, delivery conditions

(1) As a systems supplier, EPS only supplies components (semi-finished products and, if ordered, pre-assembled products). The Client's actual project and its feasibility are not part of the scope of supply. The Client is solely responsible for the technical implementation of the project including structural calculations and certification. This also applies if EPS provides installation training for the Client. This training serves as general instruction in the products supplied by EPS, and not participation in the actual project or inspection thereof. On request, EPS will provide the latest fabrication instructions for its products and, if available, the relevant general statistical values.

(2) Any deadlines and dates for deliveries and services we have proposed are always considered to be approximations only, unless a fixed deadline or date has been expressly agreed or accepted.

(3) We are then only authorised to make partial deliveries/services if they are of interest to the Client as per the purpose of the contract and do not result in considerable additional work for the Client.

(4) Our delivery obligations are subject to the proper, timely delivery by our suppliers, unless we are deemed responsible for the incorrect, delayed delivery by our suppliers.

(5) The Client can send written notice to us to deliver within a suitable timeframe two weeks after missing a delivery date. The above timeframe will be extended to four weeks if the products are to be fabricated in accordance with the specifications of the Client.

## 4. Provided documents, property rights

We reserve all property rights, patent rights, registered design rights and copyrights to illustrations, drawings, drafts, designs, calculations and other documentation. This also applies to documents classed as "confidential". The purchaser must obtain our express written consent before passing these on to third parties. Any resources provided by us remain our property unless otherwise agreed in writing or text form.

## 5. Transfer of risk

The transfer of risk complies with the agreed Incoterm 2010. The Client bears the risk of any voluntary return of goods up until they are received and unloaded by us.

## 6. Prices

Unless expressly agreed otherwise, our prices apply ex works (FCA) Incoterms 2010, excluding packaging and import duties, plus the applicable statutory VAT. The costs of packaging will be invoiced separately.

## 7. Payment

(1) Our invoices are due for payment immediately. Discounts are not given unless expressly agreed in advance. If receipt of the invoice is disputed, the Client will come into arrears without warning at the latest thirty days following receipt of the goods.

(2) Payments are initially credited against any costs, then the interest, then the primary debt, initially against the one that has not been declared legally binding, and thereafter against the older debt. The Client can only use undisputed claims that are recognised by us or are deemed legally binding, or claims which entail mutuality of obligation with regard to our claim to offset our claims. The Client is only entitled to exercise a right of retention if its counterclaim refers to the same legal contractual relationship.

(3) If any circumstances arise which we become aware of after conclusion of the contract and which give rise to justified doubts to the creditworthiness of the Client and the risk of our counterclaim, particularly in the event of the downgrading of creditworthiness by credit agencies or in the event of a deterioration of the rating in our trade credit insurance, we can demand payment in instalments for other agreed deliveries.

## 8. Liability for defects

(1) There are no claims for defects in the event of insubstantial deviation from the agreed quality or insubstantial impairment to usability. Any samples, illustrations and drawings provided will only include a guarantee or an agreed quality if this has been expressly confirmed in writing beforehand. If any of our documentation, in particular manuals, brochures and data sheets, use the term "guarantee", this is an independent guarantee which is not connected to the legal claims for defects.

(2) In the event of justified, timely notice of defects, the Client has a claim to rectification during the warranty period [Paragraph 8 (5)]; we have the right to choose the type of rectification – remedy of the defect or delivery of a defect-free item. If the rectification fails or further attempts to rectify are deemed unreasonable for the Client, the Client can assert their additional rights.

(3) If a claim is made against the Client by its commercial client or a consumer due to a defect in the supplied products which was already present during the transfer of risk, the

statutory recourse claims of the Client against us remain unaffected in accordance with Sections 445a, 445b and 478 of the German Civil Code (BGB).

(4) The right of the customer to claim damages or compensation for wasted efforts in the event of defects is regulated in Paragraph 9.

(5) The period of limitation for claims to damages is one year following the transfer of risk. This does not apply if the law in accordance with Sections 438 (1)(2) (buildings or things that have been used for buildings) and 445b (supplier recourse) stipulates longer periods, nor does it apply in cases of death, personal injury or impaired health, in the event of a deliberate or negligent breach of duty by us or if a defect has been willfully concealed.

(6) Claims against us due to a defect can only be made by the Client and are not transferable.

## 9. Liability

We are liable for any damages and only if these are based on an infringement of an essential contractual obligation or intentional or grossly negligent behaviour by us, our legal representatives or vicarious agents. If an essential contractual duty is breached with slight negligence, our liability is limited to the foreseeable damages which are typical of contracts of this type. An essential contractual obligation exists for obligations whose fulfilment enables the correct execution of the contract in the first place and on whose observation the Client depends and may depend.

Liability for damages beyond this is excluded. Liability due to culpable death, personal injury or impaired health in accordance with the legal provisions remains unaffected. This also applies in the event of mandatory liability in accordance with the German Product Liability Act (Produkthaftungsgesetz).

Compensation for damages within the meaning of this Paragraph 9 also includes compensation for wasted expenditure.

## 10. Reservation of title

(1) The goods remain our property up until complete payment of all claims due to us by the Client including ancillary claims and claims for damages. This also applies if the price for a particular product designated by the Client is paid. In the case of open accounts, the reservation of title applies as a security for the outstanding balance due to us. If the utilisation value of the reserved goods exceeds our claims by more than twenty percent, we are obligated at the request of the Client to transfer ownership, whereby the individual reserved goods to be transferred are determined by us.

(2) If the Client uses the reserved goods to produce new, movable items, the production is carried out for us without any obligations arising for us therefrom. The new item will be our property. If it is produced, connected or mixed with goods which do not belong to us, we will acquire joint ownership of the new item in accordance with the proportional value of our reserved goods in the overall value of the produced, connected or mixed items.

(3) The Client is authorised to use or sell the reserved goods as part of a proper business transaction. The Client assigns to us in advance all claims accrued through the use of the reserved goods including VAT and rights from builders' securities (the latter to the amount of the secured claims assigned to us). If reserved goods are sold or used together with other items which do not belong to us, the assignment only covers the part of the claims which corresponds to the proportion of supplied value of the reserved goods in the supplied value of the items which do not belong to us. The right of the Client to sell or process reserved goods ends with revocation by us due to a sustained deterioration of the Client's financial situation, at the latest however with its insolvency. If the Client has sold the claim as part of genuine factoring, they hereby assign the claim against the factor taking its place to us. If the recipient makes a payment into one of our Client's bank accounts, the Client hereby assigns the claim from the credit note against its credit agency to us. We accept the above assignments.

(4) The Client is authorised to collect the assigned claims if it complies with its payment obligations. The direct debit authorisation expires with the revocation by us, but at the latest in the event of delayed payment by the Client or in the event of significant deterioration to the Client's financial situation. In this case we are authorised to inform the Client's customers of the assignment and to collect the claim ourselves, as long as insolvency proceedings have not already been opened and orders from the insolvency courts do not oppose this. The Client is obligated on request to provide us with a detailed list of all claims due to us with the name and address of its customers, the amount of the individual claims, invoice date etc, and to disclose all the information required to assert the transferred claim and to allow us to check this information.

(5) Pledges or transfers by way of securities for the reserved goods and/or the assigned claims are not permitted. The Client must inform us without delay if any third parties access the reserved goods or assigned claims. The Client shall bear all costs of interventions against access by third parties if they are not borne by the third party.

(6) The Client shall store the reserved goods for us free of charge. They must adequately insure them against the usual dangers (fire, theft, water etc.). The Client hereby assigns to us its claims for compensation which are due to them for damages as described above against insurance companies or other obligated parties to the amount of the value of the reserved property, but no more than the amount of our security interest. We accept this assignment.

## 11. Applicable law, place of fulfillment, court of jurisdiction, language

(1) The contractual relationships between the Client and us are exclusively governed by the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

(2) Our registered office is the place for fulfillment of deliveries/services and payment.

(3) The course of jurisdiction is the professional, local court of our registered office, including for disputes about the validity of the contract or this agreed court of jurisdiction, unless an arbitration agreement exists. The contract text drawn up in German prevails.