

DIY Element System GmbH Rottenacker General Conditions of Sale, Delivery and Payment

Article 1 General – Scope

- (1) Our General Conditions of Sale shall apply exclusively; we shall not acknowledge terms and conditions of the purchaser, which contradict, supplement or deviate from our General Conditions of Sale unless we explicitly consented to their validity in writing. This shall also apply if we carry out the purchaser's delivery without reservation in awareness of the purchaser's terms and conditions, which contradict, supplement or deviate from our General Conditions of Sale.
 - (2) Legal declarations and notices that are issued to us by the purchaser after conclusion of the Agreement (e.g., setting time limits, notifications of defects, declaration of withdrawal or reduction) shall be in written form in order to be valid.
 - (3) Our General Conditions of Sale shall only be valid toward companies (article 14 of the Civil Code), public-law legal entities and public-law special funds.
 - (4) Our General Conditions of Sale shall be regarded as a framework agreement, also for future contracts for the sale and/or delivery of movable objects with the purchaser without us having to refer to them again in each individual case.
 - (5) References to the validity of statutory provisions shall only have a clarifying significance. Even without such clarification, the statutory provisions shall therefore apply provided that they have not been directly amended or explicitly excluded in these General Conditions of Sale.
- (4) We shall be liable under the statutory provisions, provided that the purchaser asserts compensation claims that are based on premeditation or gross negligence, including premeditation or gross negligence by our representatives or legal agents.
 - (5) We shall be liable under the statutory provisions if we breach a significant contractual obligation (obligation the fulfillment of which makes the proper implementation of the Agreement possible at all and the compliance with which the contracting party should generally rely on) with simple negligence; however, in this case, the compensation liability shall be limited to the foreseeable, typically occurring loss.
 - (6) Liability for culpable injury to life, limb or health as well as due to fraudulent concealment of a defect and the assumption of a guarantee for the quality of the goods shall remain unaffected; this also applies to liability under the product liability law.
 - (7) The limitation period for defect claims shall be 12 months, calculated from the transfer of risk.
 - (8) The limitation period in the case of delivery recourse pursuant to articles 478 and 479 of the Civil Code shall remain unaffected by para. 7.

Article 7 Joint and several liability

- (1) Our offers shall be subject to confirmation unless stated otherwise in the order confirmation. The ordering of the goods by the purchaser shall be regarded as a binding contract offer. Unless stated otherwise in the order, we shall be entitled to accept this contract offer within two weeks after its receipt.
 - (2) We reserve the ownership rights and copyrights to illustrations, drawings, calculations and other documentation. This also applies to written documentation that is marked as "confidential". Prior to disclosing these to third parties, the purchaser shall obtain our explicit, written consent.
 - (3) The details in our offers, brochures, descriptions, documentation and illustrations regarding quantity, dimension, colour and weight are not guaranteed characteristics provided that they are not explicitly described as such.
- (1) Further liability for compensation than envisaged in article 6 shall be excluded, notwithstanding the legal nature of the asserted claim. This specifically applies to compensation claims from faults on concluding a contract, due to other breaches of duty or due to tort claims for compensation of property damage under article 823 of the Civil Code.
 - (2) To the extent that our compensation liability is excluded or limited, this shall also apply with regard to the personal compensation liability of our salaried employees, wage-earners, staff, representatives and legal agents.

Article 2 Offer – offer documentation

Article 8 Securing reservation of title

Article 3 Prices – Payment terms

- (1) Unless stated otherwise in the order confirmation, our prices shall be deemed as "ex-works", exclusive of packaging; unless agreed otherwise, this shall be invoiced separately. If a change to the wage, material and energy costs as well as the value-added tax, should occur with continuing obligations, we shall be entitled to demand an adequate adjustment of the price in consideration of these factors. For other orders, we shall be entitled to adjust the prices in the case of a change to wage, material and energy costs as well as the value-added tax if more than four months lie between concluding the Agreement and the delivery date. If the delivery can only occur after the end of four months, for reasons that are the purchaser's responsibility, we shall be entitled to the same right to increase.
 - (2) The statutory value-added tax shall not be included in our prices; it shall be stated separately on the invoice in the statutory amount on the day of the invoice issuing.
 - (3) Unless stated otherwise in the order confirmation, the purchase price shall be due for payment net (without deductions) within 14 days of the invoice date and without any deduction. Any cash discount promises declared in an individual case shall only apply if the purchaser is not in default with the payment of previous invoices. The statutory regulations for payment defaults shall apply. An interest rate based on the applicable statutory default interest must be paid for the purchase price during the delay. We reserve the right to claim of further damages caused by the delay. We shall also be entitled to claim the payment of a fee of 40 euros in case of the purchaser is in default of the purchase price payment. The flat fee shall be calculated towards any damage claims owed, insofar as the damages are attributable to the costs for legal actions.
 - (4) The acceptance of bills of exchange and cheques always requires a separate agreement.
 - (5) If, after conclusion of the contract, it becomes evident that our entitlement to the purchase price is endangered due to a lack of capacity by the purchaser (e.g., due to an application for initiation of insolvency proceedings), pursuant to the statutory provisions, we shall be entitled to refuse performance and – after setting a time limit – withdraw from the Agreement (article 321 of the Civil Code) until the purchase price is paid or collateral is provided. For contrast regarding the production of non-marketable items (custom manufacture), we may declare withdrawal immediately; the statutory provisions regarding the waiver of the time limit shall remain unaffected.
 - (6) Sales and presentation aids shall be charged. If these are provided to the purchaser free of charge, these shall remain our property and may be requested back at any time. During the use of the sales and presentation aids by the purchaser, any risk associated with these shall transfer to him. He undertakes to only stock the sales and presentation aids with our goods and provide compensation of any loss or damage for which he is responsible.
 - (7) The purchaser shall only be entitled to rights of set-off and retention if his counterclaims are legally established, undisputed or acknowledged by us. Furthermore, he shall be authorized to exercise a right of retention if his counterclaim is based on the same contractual relationship.
- (1) We shall reserve title to the purchased item until all payments have been received from the business relationship with the purchaser (extended reservation of title). In the case of anti-contractual conduct by the purchaser, particularly in the case of payment default, we shall be entitled to take back the purchased item. The taking-back of the purchased item by us shall not be deemed as withdrawal from the Agreement unless we have declared this explicitly in writing. The pledging of the purchased item by us shall always be deemed as withdrawal from the Agreement. After taking back the purchased item, we shall be entitled to realize it, with the realization proceeds to be offset from the purchaser's liabilities, less adequate realization costs.
 - (2) The purchaser shall undertake to treat the purchased item with care; he shall particularly be obliged to insure it at his own expense against fire, burglary, vandalism, mains water (incl. sprinkler systems), storm, hail and natural forces at its replacement value at his own expense. If maintenance and inspection works are necessary, the purchaser shall carry these out in good time at his own expense.
 - (3) In the case of compulsory enforcement measures by third parties, the purchaser shall immediately notify us in writing, so that we may file legal action pursuant to article 771 of the Code of Civil Procedure. If the third party is not able to refund us for the judicial costs and extra-judicial costs of legal action pursuant to Section 771 of the Code of Civil Procedure and the purchaser is responsible for the initiation of compulsory enforcement measures, the purchaser shall be liable for the loss that we incur.
 - (4) The purchaser shall be entitled to sell the purchased item on in the ordinary course of business; however, he now already assigns to us, all claims in the amount of the final invoice amount (including VAT) of our claim, which he is entitled to from buyers or third parties from the onward sale, regardless of whether the purchased item was sold on without or after processing. The purchaser shall also remain entitled to collect this claim after the assignment. Our authority to collect the claim ourselves shall remain unaffected. However, we undertake not to collect the claim as long as the purchaser fulfills his payment obligations from the proceeds received, does not enter into payment default and particularly as long as no application is made to file for bankruptcy or settlement or insolvency proceedings or discontinuation of payment exists. However if this is the case, we may demand that the purchaser discloses the assigned claims and their debtors to us, provides all of the necessary details for collection, releases the related documentation and notifies the debtors (third parties) about the assignment.
 - (5) The processing or transformation of the purchased item shall always be carried out by the purchaser on our behalf. If the purchased item is processed with items that do not belong to us, we shall acquire the co-ownership of the new item in the proportion of the value of the purchased item (final invoice amount, including VAT) to the other items being processed at the time of processing. The same shall apply to the item created through processing as for the purchased item delivered subject to reservation.
 - (6) If the purchased item is inseparably combined with other items that do not belong to us, we shall acquire the co-ownership of the new item in the proportion of the value of the purchased item (final invoice amount, including VAT) to the other items being combined, at the time of combining. If the combining occurs in a way that the purchaser's item is regarded as a main item, it is agreed that the purchaser shall transfer the proportional co-ownership to us. The purchaser shall store the sole property or co-property created in this way on our behalf.
 - (7) The purchaser shall also assign to us, the claims to secure our claims against him, which are created for him against a third party by linking the purchased item with a property.
 - (8) We undertake to release collateral that we are entitled to upon request by the purchaser if the realizable value of our collateral exceeds the claims to be secured by more than 10 per cent; it shall be up to us to select the collateral to be released.

Article 4 Delivery period

- (1) Adherence to our deliver obligation shall be subject to timely and proper fulfilment of the purchaser's obligation. The objection of a non-fulfilled contract shall remain reserved.
 - (2) If the purchaser enters into acceptance defaults, culpably breaches other cooperation duties or delays our delivery due other reasons for which the purchaser is responsible, we shall be entitled to demand compensation for the losses thereby incurred, including extra expenses (e.g., storage costs). For this, we shall charge flat-rate compensation of EUR 10 per pallet, per calendar day, starting with the delivery date or – in the absence of a delivery – with the notification that the goods are ready for shipping. After granting a grace period that has fruitlessly expired, we may withdraw from the Agreement or demand compensation due to non-performance. In the latter case, we shall be entitled to either demand compensation for the loss actually incurred or optionally demand flat-rate compensation of 30 per cent of the purchase price.
 - (3) For both flat-rate fees in mentioned in article 4, para. 2, the following shall apply: the provision of evidence regarding a higher loss and our legal claims (particularly compensation for extra costs, adequate compensation, cancellation) shall remain unaffected; however, the flat-rate fee shall be offset from further financial claims. The purchaser shall have the right to prove that no loss was incurred at all, or only a significantly lower loss than the flat-rate fee.
 - (4) If the requirements of para. 2, sentence 1 exist, the risk of accidental loss or accidental deterioration of the purchased item shall be transferred to the purchaser at the time when he entered into acceptance or debtor default.
 - (5) Partial deliveries are admissible to a reasonable extent.
- (1) Logos, drawings, illustrations, renderings, photographs, descriptions and the offer shall remain our property and may not be disclosed to third parties, copied or used for self-production of the relevant items, without our written consent.
 - (2) Stamping or moulding tools as well as other equipment required for the production of special designs shall be invoiced to the purchaser at the cost price. It is agreed that these tools and equipment shall remain our property. The purchaser may demand that such tools are only used for orders placed by him.
 - (3) Samples or drawings that are sent in shall only be returned upon request. If an order is not made, we shall be entitled to destroy samples and drawings one month after submission of the offer if no return is requested.

Article 9 Miscellaneous

Article 10 Place of jurisdiction – place of performance

Article 5 Transfer of risk – packaging costs

- (1) Unless stated otherwise in the order confirmation, delivery shall be agreed as "ex-works" where the place of performance shall also be. Upon request by and at the expense of the purchaser, the goods shall be shipped to a different destination (shipping purchase). Unless agreed otherwise, we shall be entitled to determine the type of shipping (particularly shipping companies, shipping method, packaging) ourselves.
 - (2) The risk of accidental loss and accidental deterioration of the goods shall transfer no later than upon handover to the purchaser. However, with a shipping purchase, the transfer of accidental loss and accidental deterioration of the goods as well as the risk of delay shall already transfer with the handover of the goods to the shipping agent, freight forwarder or other person or institution authorized to carry out shipping. If an acceptance inspection is agreed, this shall be relevant for the transfer of risk. The handover/acceptance inspection shall be deemed as having occurred if the purchaser enters into default with the acceptance (see article 4, para. 3).
 - (3) Transport packaging and all other packaging on the basis of the Packaging Ordinance shall not be taken back; with the exception of pallets. The purchaser undertakes to ensure disposal of the packaging at his own expense.
 - (4) If requested by the purchaser, we shall cover the delivery with transport insurance; the purchaser shall bear the resulting costs.
- (1) Defect claims by the purchaser require that he has properly fulfilled his inspection and complaint obligations pursuant to article 377 of the Commercial Code.
 - (2) If the purchased item has a defect, we shall have the option to provide supplementary performance in the form of rectification of the defect or delivery of a new, non-defective item. Our right to refuse the selected type of supplementary performance under the legal requirements shall remain unaffected.
 - (3) If the supplementary performance should fail, the purchaser shall have the option to withdraw from the Agreement or demand a reduction.
- (1) The law of the Federal Republic of Germany shall apply, subject to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
 - (2) The German version of these General Conditions of Business/Conditions of Sale is exclusively applicable and legally binding. The English and French translations are only for information purposes.