

## **Sales and Delivery Conditions of ESBE GmbH in D-85221 Dachau**

Last amended in January 2019

### **1. General**

- 1.1. The business relationship between ourselves (ESBE GmbH) and the Customer will be subject solely and at all times to the version of our Sales and Delivery Conditions in force at the time of the order.
- 1.2. The present Standard Terms and Conditions will only apply when the customer is a company (§ 14 of the German Civil Code), a public law legal entity or public law special assets.
- 1.3. Any contrary terms and conditions of the Customer are rejected without exception. Individual written agreements, such as for example those covering conditions, will only be valid when signed by us will have precedence for the individually regulated items. Unless we have expressly agreed in writing to their application, contrary terms and conditions of the customer will not be recognised.
- 1.4. Our sales force employees are not entitled to make verbal agreements with customers in connection with the contract, which are at variance with the written contract or these Standard Terms and Conditions. Amendments and additions must be in writing in order to be valid. Declarations issued by fax or e-mail will be considered as equivalent to the written form.

### **2. Quotation and acceptance**

- 2.1. A written order will be accepted in the form of our order confirmation or by the delivery – subject to the proviso of partial acceptance and part-delivery.  
The Customer is bound by an order issued by him for a period of 14 calendar days subsequent to the order having been dispatched. We are entitled to accept the offer within this period of time. The length of the acceptance deadline will be governed by the date on which our acceptance is sent to the Customer. Our acceptance of the offer may also be replaced by the delivery of the goods.

### **3. Price agreement**

- 3.1 The prices of our goods are based on delivery ex factory/warehouse plus ancillary costs, particularly freight costs as well as value added tax applicable on the day the invoice is issued. The prices of our goods and ancillary costs are based on the price list valid at the time.  
In the case of Incoterms ( FCA/DAP freight always unpaid) deliveries our freight charges are as follows:  
Germany up to 30kg: Wholesale/Stockists: €8.85; Drop shipments to installers:€16.75; Express deliveries to construction sites: €29.95.  
Austria, Czeck Republic, Slovakia, Netherlands, Lichtenstein, up to 30kg: Wholesale/Stockists €16,95.  
Switzerland up to 10kg: Wholesale/Stockists €36.00  
Greece, Bulgaria, Romania, Slowenia, Hungary, Croatia up to 30kg: Wholesale/Stockists €19.50.  
Freight costs will be charged per the desired delivery date and not per order.
- 3.1. Any increased freight costs as a result of special delivery areas or incorrect or incomplete data provided by the Customer will be invoiced additionally.
- 3.3 Prices as shown in the list of gross prices may be increased at the end of the year and will be notified to the Customer beforehand. Price increases will only be applied to new purchase contracts to be delivered after the price increase.

### **4. Delivery and dispatch conditions**

- 4.1. Compliance with delivery dates is conditional on the Customer fulfilling his obligations punctually and correctly. Delivery dates will be deemed to have been complied with provided that the goods leave the warehouse on the date scheduled. The Customer is required to allow us a reasonable grace period in the event of delivery arrears.
- 4.2. We will inform the Customer immediately should we be unable to meet binding delivery dates (non-availability of the service) for reasons for which we are not responsible and simultaneously notify the probable new delivery date. We are entitled to wholly or partially rescind the contract should the service still not be available within the new delivery deadline; we will immediately refund any payment for the service already made by the Customer. The failure of our supplier to deliver to us will be deemed a case of the non-availability of the service should we have concluded a parallel covering order, should neither we nor the supplier be to blame or should we not be required to produce the goods in the particular case.
- 4.3. The provisions of the law will govern whether we are in arrears with our delivery. In any event, a reminder from the customer is required. The Customer may demand a lump sum amount by way of compensation should we fall into arrears with our deliveries. The lump-sum amount of compensation will be 0.5% of the net price (value of the goods) for every complete week in which we are in arrears subject however to a maximum amount of 5% of the delivery value of the goods delivered in arrears. We reserve the right to prove that that the Customer has not incurred any damage or considerably lower damage than the lump-sum amount referred to above.

- 4.4. The Customer's rights in accordance with section 8 of these Standard Terms and Conditions and our legal rights, particularly in the absence of an obligation to provide the service (e.g. due the impossibility or unreasonableness of the service and/or subsequent fulfilment) are not affected.
- 4.5. We reserve the right to deliver goods from some other place than the place of fulfilment. The Customer is required to pay the transport costs and to include the costs of transport insurance.
- 4.6. We are entitled to deliver solely in return for payment in cash or against some other security for payment of the purchase price and other payment obligations should the Customer be in arrears with the payment of a debt arising from the whole business relationship.
- 4.7. Risk will pass (also in cases of freight-paid delivery or should the goods be picked up) at the time the goods are handed over to the freight forwarder. At the Customer's request, we are able but not required to insure the goods for transport.
- 4.8. Goods that have been ordered but not called off may be automatically delivered and invoiced after one year. We reserve the right to invoice storage costs in these cases.
- 4.9. We are not required to take back goods that are free of defects. Should the customer however wish to return the goods within six months of their having been sold, a return fee will be charged, based on the product and its condition. Products may only be taken back provided that they were not manufactured in accordance with specific customer wishes.
- 4.10. We reserve the right to change the shape and the design of our products provided that their function or installation are not essentially changed and the change is reasonable from the Customer's point of view.

#### **5. Reservation of title**

- 5.1. We retain title to goods sold until all of our current and future claims under the purchase contract and current business relations are paid in full (insured receivables).
- 5.2. Goods subject to reservation of title may neither be pledged to third parties nor title to them transferred as collateral until the insured receivables are paid for in full. The Customer is required to inform us immediately in writing should third parties seize goods that are our property.
- 5.3. Should the Customer behave contrary to contract, particularly by failing to pay the purchase price due, we are entitled to rescind the contract in accordance with the provisions of the law and to demand the return of the goods on account of reservation of title and the rescission of the contract. Should the Customer fail to pay the purchase price due, we may only exercise these rights provided that we have set the Customer a reasonable grace period for payment beforehand or the law does not require such a grace period and the Customer has still not paid.
- 5.4. The Customer is authorised to re-sell and/or process goods subject to reservation of title as part of his normal business activities. In this case, the following additional provisions will apply.
- 5.5. Reservation of title includes the products at their full value resulting from processing, mixing or combining our products, whereby we will be considered the manufacturer. Should the property right of third parties remain in force when our products are processed, mixed or combined with third party goods, we will acquire co-ownership in proportion to the invoice value of the processed, mixed or combined goods. Moreover, the resulting product is subject to the same rules as goods delivered subject to reservation of title.
- 5.6. The Customer cedes to us with immediate effect the receivables due from third parties as a result of the re-sale of the goods or products, either in total or to the extent of our share of co-ownership in accordance with the above paragraph, as security together with all ancillary claims. We accept the cession. The Customer's obligations referred to in paragraph 2 also apply with regard to the receivables ceded. The cession also applies to any receivables balances. The share of receivables ceded to us must be given priority in satisfying claims.
- 5.7. The Customer is still authorised to collect the receivable, in addition to ourselves. We undertake not to collect the receivable as long as the Customer fulfils his payment obligations to us, does not fall into arrears with his payments, no application to open insolvency proceedings has been initiated and his ability to operate effectively is not otherwise impinged. Should this however be the case, we may demand that the Customer provide us with information on the receivables ceded and the debtor from whom they are due, provide us with all the information required for collection, hand over the associated documents and inform the debtors (third parties) that receivables have been ceded.
- 5.8. Should the realisable value of the receivables exceed our receivables by more than 10%, we will, at the Customer's request, release securities as we choose.

#### **6. Payment conditions / due date / netting of claims**

- 6.1. Invoices must be paid within 30 days of the issue of the invoice and delivery or the goods having been picked up, without the deduction of any cash discount. The Customer may make advance payments.
- 6.2. The Customer will be in arrears immediately without any further reminder should these payment conditions not be complied with. We are entitled to the rights provided for in law in the event of arrears.
- 6.3. The Customer's obligation to pay is not fulfilled until the payment has been credited to our bank account. Payments to third parties do not constitute our receipt of payments. The Customer is required to bear the risk and the costs of the payment transaction.

- 6.4. In the event of payment arrears, all other open receivables, including bills of exchange, will become due for immediate payment, irrespective of their previous due date. In the event of payment arrears, we are entitled to rescind all current contracts, to cease deliveries and only to renew delivery on the provision of collateral or against payment on delivery. The same will apply in the event of a complete or partial disposal of the company or shareholdings in the company or in the event of a change of legal form of the Customer's company, in the event of a major deterioration in its asset situation or should circumstances become known to us subsequent to our acceptance of the order that, based on a rational judgement, make the grant of credit appear questionable.
- 6.5. The Customer may only net his claims against our claims provided that they are undisputed or have been established in law. The Customer may only withhold payment when he has undisputed or legally established claims arising from the same contractual relationship.
- 6.6. The Customer is not permitted to cede his claims against us to third parties.
- 6.7. Sales and Technical personnel, drivers and service employees are not authorising to receive payments.

## **7. ESBE Guarantee / Implied Warranty / Notice of defects / Quality defects**

- 7.1. The Customer is entitled to the rights provided for in law in the event of defects with the object delivered. The ESBE guarantee does not limit such rights.  
The ESBE guarantee covers material quality and workmanship of ESBE makes for a period of 2 years. A guarantee claim is valid for such causes only. Excluded from any guarantee are claims resulting from
  - a sale by specialized wholesalers to non-professionals/endusers,
  - mal-function resulting from wear and tear parts of ESBE makes,
  - circumstances for which ESBE cannot be made responsible: Calcification, chemical and/or electrochemical influences, wrong and/or incomplete mantling, - settings, mechanical damages
- 7.2. All goods delivered that show defects will, at our option, either be reworked at our expense or replaced with newly delivered goods.
- 7.3. The subject of our deliveries is solely goods sold with the product features stated by us and to be used for the purpose stated by us. Any additional product features and types of use will only be considered product specifications provided that this has been confirmed to the Customer in writing.
- 7.4. The Customer's warranty rights require that he has correctly fulfilled his statutory obligations to examine the goods and to report defects (§ 377 of the German Commercial Code). In this context, obvious defects must be reported in writing within three days at the latest of the delivery having been received. Hidden defects must be reported within ten working days of their discovery. The defect must be reported in writing together with a description of the defect.
- 7.5. Should defects be reported, payment may be withheld in a reasonable proportion to the total receivables from the particular transaction. This does however not apply should the defect reported be subject to legitimate doubts or should the claim have become time-expired. In the event of an unjustified claim, we may charge the Customer any expenses incurred.
- 7.6. Only reasonable costs, customary in the particular area, incurred by third parts as a result of quality defects incurred in repairing the defect or exchanging the defective goods, will be reimbursed.

## **8. Limitation of liability**

- 8.1. Claims for compensation by the Customer on account of obvious defects in the goods delivered will not be accepted should the Customer have failed to notify us of the defect within three days of the delivery of the goods.
- 8.2. Any other claims by the Customer are also excluded with the exception of customer claims for compensation arising from injury to life, limb and health or the infringement of essential contractual obligations (cardinal obligations) as well as liability for other damage caused by a deliberate or grossly negligent infringement of obligations by ourselves, our legal representatives or vicarious agents. Essential contractual obligations are such as whose fulfilment is essential in achieving the goals of the contract.
- 8.3. In the event of an infringement of essential contractual obligations, we are only liable for damage that is typical for this type of contract and is foreseeable should this have been caused by simple negligence, unless the Customer's claims relate to damage caused by injury to life, limb or health.
- 8.4. The restrictions (on liability) in paragraphs 1 and 2 also apply in favour of our legal representatives and vicarious agents should claims be lodged directly against these persons.
- 8.5. The provisions of the German Product Liability Law are not affected.

## **9. Returns**

Returns of products without any obvious failure will be accepted tentatively only and only upon prior notice and upon ESBE's written confirmation and only within a period of 6 months from the date of delivery. Original delivery note/invoice must clearly be identified for such returns. A re-integration charge of a minimum of 25% of invoice value will be deducted from a credit note. ESBE maintains the right to check the rational of the return and to send back returned products to the owner.

**10. Place of jurisdiction / concluding provisions**

- 10.1. The sole place of jurisdiction in the event of disputes is the place of jurisdiction responsible for our registered office. This applies to customers with commercial characteristics and to customers who are not consumers who have their registered office or are domiciled in Germany. The place of fulfilment for all obligations is our registered office. Contractual relations are subject to German substantive law to the exclusion of the United Nations Convention on the International Sales of Goods (CISG).
- 10.2. Should individual provisions of the Sales and Delivery Terms and Conditions be or become invalid or unenforceable after publication, the remaining Sales and Delivery Terms and Conditions will not be affected. The invalid provision will be replaced by a valid provision whose commercial result approximates as closely as possible with that of the invalid provision. The above provisions will also apply should there prove to be an omission in the Sales and Delivery Terms and Conditions.