

# GENERAL TERMS AND CONDITIONS OF BUSINESS

## 1. Scope and Application

These Terms and Conditions of Business shall apply to deliveries within the Federal Republic of Germany in relation to business owners (Section 14 BGB [German Civil Code]), legal entities under public law and special funds under public law.

All deliveries, services and offers shall be based on these Terms and Conditions of Business and any separate individual agreements possibly made. Terms of purchase of the ordering party that deviate herefrom shall, even if an order has been accepted, not become part of the contract.

In accordance with the Bundesdatenschutzgesetz [German Federal Data Protection Act], we hereby point out that personal data from the ordering party shall be electronically processed by us and passed on internally only insofar as this is necessary for handling the business relations.

## 2. Terms of Sale

**2.1** All agreements shall become invalid, if they are not confirmed by us in writing within 8 working days. The ordering party shall have no rights of transfer to third parties under any contract.

**2.2** Price quotations shall be non-binding and subject to change without notice. Only the prices quoted in the acknowledgement of the order shall apply.

**2.2.1** Our prices shall be based on the procurement costs pre-specified to us on the raw material market at the time of the acknowledgement of the order. If this cost situation changes, we shall be entitled to subsequently carry out a price adjustment or possibly rescind the entire order and/or the residual order.

**2.2.2** The prices quoted in our order acknowledgements shall be either prices without metal, which exclude the price of metal, or basic prices on a defined copper basis plus the difference in relation to the DEL quotation (quotation of the non-ferrous metal-working industry for electrolytic copper for conducting purposes), plus 1 % procurement costs and a processing surcharge. In the case of full-price transactions, the copper value on the day following the date of receipt of the purchase order, plus a processing surcharge, shall be added to the prices without metal that are quoted in the order acknowledgements.

**2.2.3** In the case of transactions that are to be carried out within 4 months of the conclusion of the contract, we shall be entitled to increase the agreed prices in view of any short-term change in the metal quotation.

**2.2.4** The metal quotation shall form the basis for the calculation and settlement of raw material prices. The metal quotation shall be ascertained on the basis of the quotation of the non-ferrous metal-working industry for electrolytic copper wire bars for conducting purposes (DEL quotation), plus procurement costs incurred. The DEL quotation is published in the business section of relevant daily newspapers.

**2.2.5** If it is not possible to purchase and procure metal at a price equivalent to the DEL quotation, or if this has not been fully safeguarded, we shall charge the actual metal procurement prices, plus procurement costs incurred.

**2.2.6** If the ordering party provides copper to the supplier, we shall exclude this copper from the price charged. The ordering party shall make this copper available to the supplier no later than 6 weeks before the confirmed delivery date.

**2.3** Call orders. If delivery on call has been agreed upon, the ordering party shall, within a reasonable period not exceeding one month, determine the point in time when the delivery as a whole is to be made and give us written notification of this point in time. This shall also apply in the case of scheduled partial deliveries on specified dates for acceptance of delivery. In principle, call orders shall be delivered within 3 months (90 days) of the acknowledgement of the order, unless call dates have been separately agreed upon in writing. If the ordering party fails to comply with its duty to call for delivery, we shall be entitled to bring an action for acceptance of delivery and for payment. After the duty to call for delivery has expired, further partial deliveries to be performed on call shall be subject to the company Klasing Kabel GmbH's prices valid at the time of deferred calls for delivery.

**2.4** Orders shall not be deemed accepted until they have been acknowledged by the works. Our commercial agents are appointed to negotiate transactions, not conclude contracts.

## 3. Terms of Delivery

**3.1** A prerequisite for our duty to deliver is that we are able to purchase the raw materials for the order at prices equivalent to the raw material quotations relevant on the day of the acknowledgement of the order. If this prerequisite is not met, point 2.2.1 of our General Terms and Conditions of Business shall apply.

**3.2** Delivery periods and dates shall always be deemed to be only approximate. The delivery period shall begin no earlier than when our written acknowledgement of the order is sent off, and the delivery date specified therein, but not before the ordering party has furnished all documents that may have to be obtained and all material that may have to be made available, and the agreed payment terms have been complied with.

**3.3** The delivery period shall be deemed complied with, if, before the delivery period expires, the delivery item has left our works or our warehouse or readiness for dispatch has been communicated.

**3.4** If amendments or supplements to the delivery contract are subsequently agreed upon, a new delivery period shall be agreed upon at the same time, if necessary. The new delivery period shall not begin before our new acknowledgement of the order has been sent off.

**3.5** Events of force majeure shall entitle us to postpone the provision of the service for a reasonable period or rescind the part of the contract not yet performed. Strike, lockout, mobilisation, war, blockade, bans on imports and exports, shortage of raw material and fuel, fire, transport blockades or disruptions to business or transportation, as well as similar circumstances, including those occurring at our suppliers, shall be deemed to be equivalent to force majeure. Damage claims of the ordering party shall be excluded in the event of force majeure, except in cases of wrongful intent or gross negligence on our part.

**3.6** We shall not be deemed to be at fault for the circumstances specified above, even if these arise whilst we are already in default. We shall, as soon as possible, give the ordering party notification when such hindrances begin and end.

- 3.7** Delivery obligations and delivery periods agreed upon shall be subject to our being supplied by our suppliers correctly and in due time. If this is not the case, we shall be entitled to rescind the contract without having to pay compensation. We shall not assume any procurement risk whatsoever.
- 3.8** If the delivery period is exceeded, the ordering party shall grant us a reasonable grace period of at least three weeks. If the delivery period, including such reasonable grace period, is not complied with, we shall be liable only for the invoiced value of the quantity of goods not delivered in due time, the maximum extent of our liability being the sum of any negative interest.
- 3.9** After the time limit for accepting delivery has expired, we shall no longer be obliged to deliver. If circumstances that give reason to doubt the credit-worthiness of the ordering party become known to us after the contract has been concluded, we may, at our discretion, rescind the contract, demand advance payments or make our delivery dependent upon the provision of corresponding collateral. In particular, we shall be entitled to this right, if, despite a reminder and despite claims having fallen due, the ordering party fails to pay immediately or without delay.
- 3.10** We reserve the right to deliver up to 10 % of the order quantity short of the length specified or in excess of the length specified. The right to make deviations for reasons relating to raw materials or manufacturing shall remain reserved. Over-deliveries or under-deliveries customary in the trade shall be permissible.
- 3.11** If orders for special goods are placed, the lengths of the goods to be delivered shall depend upon the production-related conditions.

#### **4. Prices, Payment and Set-off**

Unless otherwise agreed upon, our prices ex works, including loading, but excluding packaging, freight charges and value-added tax shall apply.

All payments shall have debt-discharging effect only if made to EUROFACTOR GmbH Oberhaching, to whom we have assigned our present and future claims arising from our business relationship. We have also transferred to EUROFACTOR GmbH our property that is under retention of title. All payments shall be made to EUROFACTOR GmbH, without any deduction, within 30 days of the invoice date. In this respect, the date of receipt of the credit entry on EUROFACTOR GmbH's bank account shall be the relevant date of payment. Subject to agreement, we shall allow a cash discount on the net value without metal, but not before all due claims have been settled. We shall accept bills of exchange only according to prior agreement and only on account of payment. Discount charges and interest shall be borne by the ordering party. In the case of payments of any kind, the date when EUROFACTOR GmbH has the amount concerned at its disposal shall be deemed to be the date of payment. If the agreed payment terms are not complied with, all existing claims shall become due and payable immediately. The ordering party shall be in default even without a reminder. Subject to the reservation of other rights, interest customary in the trade shall be charged. The ordering party shall be entitled to set off or retain payments only in the case of counter-claims that have been determined by a final and non-appealable court judgement, are undisputed or have been acknowledged. The ordering party shall be authorised to exercise a right of retention only insofar as its counter-claim is based on the same contractual relationship.

#### **5. Passage of Risk**

Any risk shall pass to the ordering party once the goods have been reported as being ready for collection or dispatch or have left our establishment or have been taken possession of by the ordering party at our works. This shall apply also in cases of delivery carriage paid. If dispatch is delayed at the ordering party's request or for reasons imputable to the ordering party, the risk for the period of delay shall pass to the ordering party.

If goods are returned for reasons for which we are not responsible, the ordering party shall bear all risk until we receive the goods.

#### **6. Retention of Title**

We shall retain title to the delivery item (goods under retention of title) until all claims to which we are entitled from the business relationship with the ordering party, now or in future, on any legal basis whatsoever have been fully paid. All rights of title have been assigned by us to EUROFACTOR GmbH.

Any processing or remodelling of the goods that are under retention of title by the ordering party shall be carried out exclusively on our behalf. If the ordering party combines or mixes goods under retention of title with other goods not belonging to us, we shall acquire joint title to the new item in the ratio of the total value of the new item to the invoiced value of the goods under retention of title. The new item arising from such processing shall also be deemed to be goods under reservation of title within the meaning of these provisions.

Goods under retention of title may be used or sold by the ordering party only in the ordinary course of business. The ordering party shall not pledge the delivery item or assign the delivery item as collateral. In the event of any attachment, seizure or other disposition by third parties, the ordering party shall promptly notify us. The ordering party hereby assigns to us in advance as collateral all claims to which it is entitled in connection with any on-selling. If goods under retention of title are sold by the ordering party together with other goods not belonging to us, whether after having been processed or remodelled or without having been processed or remodelled, the claims shall be assigned to us in the sum of the invoiced value of the goods under retention of title. The above assignments shall not involve any deferment of our payment claims against the ordering party.

If the ordering party conducts itself in breach of the contract, particularly by defaulting on payment, we shall be entitled to reclaim possession of the goods under retention of title, and the ordering party shall be obliged to surrender possession of the goods. Insofar as the realisable value of the collateral to which we are entitled under the above provisions exceeds the value of our claims by more than 10 %, we shall, at the ordering party's request, release surplus collateral of EUROFACTOR GmbH's choosing.

Any petition for the institution of insolvency proceedings concerning the ordering party's assets shall entitle us to rescind the contract and demand that the delivery item be returned immediately.

#### **7. Warranty**

Subject to Section 10, we shall, with the exclusion of all further claims, be liable for quality-related defects as follows:

No guarantees for the qualities or durability of the delivery item shall be provided, unless expressly agreed upon.

If the item was already defective at the time of the passage of risk, we shall, at our option, eliminate the defects within a reasonable period by, at our option, rectifying the item or replacing it with a defect-free item. This claim of the customer shall not exist in cases of only a minor deviation from the agreed qualities, or if usability is restricted only to a minor extent. The discovery of such defects shall be reported to us in writing without delay. This shall also apply in the case of shortfalls in quantity. Replaced parts shall become our property.

In particular, we shall assume no liability in the following cases: unsuitable or improper use, normal wear and tear, incorrect or negligent handling, electrochemical or electrical influences, unless we are responsible for these.

Recourse claims of the customer against us under Section 478 BGB [German Civil Code] (business owner's recourse) shall exist only insofar as the customer has not made with its customer any agreements beyond the statutory defect-related claims.

The limitation period for defect-related claims shall be 12 months from delivery of the goods, or 18 months from notification of readiness for delivery.

The above limitations of liability shall not apply in cases of mortal injury, physical injury or health damage, in cases of intentional or grossly negligent breach of duty on our part, in cases of fraudulent concealment of a defect or in cases where a guarantee of qualities has been provided. In this respect, the statutory time limits shall apply.

The original limitation period shall not be extended as a result of acts of supplementary performance. Only the seller, not EUROFACTOR GmbH, shall be liable for faulty material or workmanship.

## 8. Rights

### 8.1 Rights in tools

Neither the ordering party nor third parties shall acquire any rights (rights of transfer, rights of use, etc.) as a result of contributions to the cost of tools. If third-party property rights are infringed in the case of deliveries based on drawings or other details provided by the ordering party, the ordering party shall indemnify us against all claims.

### 8.2 Rights in trademarks / product designations

Our own trademarks and product designations specified in our price lists are protected by copyright.

## 9. Liability

Regardless of the legal basis, we shall be liable for loss not incurred in relation to the delivery item itself only

- in cases of wrongful intent,
- in cases of gross negligence on the part of the proprietor/organs or managerial employees, - in cases of culpable mortal injury, physical injury or health damage,
- in cases of defects fraudulently concealed,
- in cases where an express guarantee undertaking has been provided,
- in cases of defects in the delivery item, insofar as we are liable under the Produkthaftungsgesetz [Product Liability Act] for personal injury or property damage to items used privately.

If duties material to the contract (material contractual duties) are culpably breached, we shall be liable for all forms of negligence, but limited to the reasonably foreseeable loss typical of this type of contract. Further claims are hereby excluded.

## 10. Export Regulations

If the ordering party exports the goods from Germany to abroad, it shall always be examined whether the products exported are subject to the restrictions of the Außenwirtschaftsgesetz [Foreign Trade Act] of the Federal Republic of Germany. The exporter of the products shall itself bear responsibility for observance of the corresponding export regulations. This shall likewise apply to the provisions of the foreign trade law of the USA.

## 11. Place of Performance, Place of Jurisdiction

- 11.1 Our registered office shall be the place of performance for all obligations, including the duty to pay, ensuing directly or indirectly from this contractual relationship.
- 11.2 The court having jurisdiction over the place where our registered office is situated shall be the place of jurisdiction. We shall also be entitled to bring an action before a court that has jurisdiction over the place where the registered office, or a branch, of the ordering party is situated.

## 12. Applicable Law

- 12.1 The laws of the Federal Republic of Germany shall exclusively apply to these business relations and the entire legal relations between us and the ordering party.
- 12.2 The application of UN sales law is hereby excluded.

## 13. Final Provisions

- 13.1 Amendments and supplements or collateral agreements shall only be legally effective in writing.
- 13.2 If any provision in these Terms and Conditions of Business is or becomes ineffective, this shall not affect the effectiveness of the other provisions. Any invalid provision shall be replaced with a provision that has been agreed upon between both parties to the contract and, insofar as possible, fulfils the purpose originally aimed at.