

General Terms and Conditions of

ESC EUROPA-SIEBRUCKMASCHINEN-CENTRUM GmbH & Co. KG

General conditions

Our General Terms and Conditions of Business shall be exclusively applicable; we will not acknowledge any adverse conditions or any customer's conditions deviating from our GTCs, unless we accepted these other conditions expressly in writing.

Offer and conclusion of contract

Our offers are subject to change without notice. Descriptions of goods in catalogues, brochures, offers etc. do not constitute any guarantee of quality. Any contract shall be considered as awarded only if it was confirmed in writing or if delivery is being performed tacitly. Supplements and amendments to an agreement require our written confirmation in order to be valid. Modifications in construction design and material are allowed, provided that they do not substantially impinge upon the contractually agreed utility of the goods, and as long as the modification is appropriate for the customer.

Cost estimates, drawings and other documents as well as software (as may be the case) remain our property, even if delivered by us. We reserve all rights related to them. The documents may not be reproduced nor made available to third parties without our express written consent.

Prices

The prices given, unless otherwise agreed, are to be understood ex works, excluding freight, assembly, packaging and insurance plus the legally applicable value-added tax, if and when applicable. If, after our confirmation of the customer's order and prior to dispatch of the goods, the salaries or other prime costs including procurement costs with subcontractors do increase, we are entitled to charge the higher costs to the original purchase price. In such case, upon the customer's request, we have the obligation to disclose our cost calculation.

Delivery periods

The agreed term of delivery begins with the dispatch of the order confirmation but not earlier than the supply of all documents, approvals, releases and the receipt of an agreed advance payment from the customer as well as all technical details have been clarified. The supply period is deemed observed if the consignment of ordered items is dispatched within said period.

The delivery period shall be impeded as long as the customer is in default with any obligations.

In the event of unforeseeable impediments, such as all kinds of operational disruptions, difficulties in material procurement, unless they were caused by acts involving intentional conduct or gross negligence, or other instances of force majeure, we reserve the right, unless it makes the fulfilment of the contract more difficult for us or even renders it wholly or partly impossible, at our discretion, to either suspend delivery for the duration of such disruptions and to the extent of their impact or to withdraw from the contract. We shall notify the customer of the start and end of such impediments as soon as possible.

The customer may withdraw from the contract before delivery, only when the fulfilment of contract is impossible or when we delayed in delivery, provided that we fail to perform our contractual duty within a reasonable time period of grace stipulated by the customer. The withdrawal has to be declared in writing and immediately after occurrence of the cancellation reason. Claims for damages due to late delivery and/or undone delivery are excluded, unless in those cases, in which we are liable for gross negligence and intent. This exclusion shall not apply in cases of injury of life, body or health if this has been caused by a negligent breach of duty from ESC EUROPA-SIEBRUCKMASCHINEN-CENTRUM GMBH & CO. KG (ESC) or our vicarious agents.

Supplier's right of withdrawal

If it becomes apparent after conclusion of the contract that our claim for payment is jeopardised by the customer not being able to perform, we may refuse performance. The right to refuse performance expires upon payment of our receivables or provision of a payment security. We may fix a reasonable period for the purchaser to make payment or provide security. After fruitless expiry of the time limit, we will be entitled to withdraw from the contract.

Payments

All invoices become payable with immediate effect. The customer is automatically in delay, if the payment is not settled 30 days after entrance of the invoice, at the latest after receipt of the consignment. Customers who are consumers within the meaning of § 13 German Civil Code (BGB) the above shall apply only if the customer is notified explicitly of this legal effect in the invoice.

Machines, appliances and devices are payable: 40 % deposit with written purchase order, 50 % as soon as the goods will be ready for dispatch, and 10 % net cash after delivery, unless otherwise stipulated in an individual contract.

Checks shall only be accepted on account of performance and are only deemed as payment on unreserved crediting. All costs incurred in this respect, in particular bank and other fees plus VAT are at the expense of the customer and become due immediately.

Only set-offs or withholding of payments as set-offs are permissible which are not disputed or have been upheld in a court of law.

If the customer defaults on payment, we have the right to claim 8 percentage points default interest above the respective basic interest rate per annum. Provided that the customer is a consumer, the interest rate on default is 5 percent points above the basic interest rate. If we can prove that we suffered a greater damage by his default, we are entitled to assert this damage.

Reservation of property rights

We reserve the right of ownership in respect of the goods supplied until such time as all claims under the business relationship with the partner have been met.

The customer may not resell the goods until full payment has been made, unless he made clear to act as a reseller before concluding the contract.

Any pledge, assignment as security, renting or other transfer of the delivery item to third parties shall be deemed unauthorised as long as our reservation of ownership continues. The purchaser must inform us immediately of any restraint or other interference by third parties with our rights to the goods subject to reservation of title.

The customer shall be obliged to treat conditional commodities carefully, keep them in safe custody and in particular, he shall be obliged to insure them adequately against fire, theft, water damage and vandalism. In event of a damage he hereby assigns all claims that he acquires against his insurance in full height of the aggregate sum payable to us as security. We herewith agree to the assignment. The customer is obliged to give us proof of an insurance against all above mentioned risks upon request.

In case the customer should sell the goods delivered by us irrespective of their condition he hereby assigns to us the claims he has against his customers from such sale. The customer is obliged to respond to requests for information and to give proof of a resale and thereby gained claims, in the extent to which we are able to realise the debts assigned to us. We herewith agree to the assignment.

If the reserved goods are combined with other goods such that they become an integral component of a new item, we acquire property rights relating to the object produced, at least co-ownership in the proportion of the value of the reserved goods.

In case of a delay in payment or if the customer violates other essential contractual obligations we are authorised to withdraw the retained goods. The repossession of the delivery items through us does not constitute a withdrawal from the contract.

If the value of the supplier's securities exceeds his claim by more than 20%, the supplier is obliged to release securities to cover that amount at the request of the customer. Security values are regarded as sales price of the goods without VAT.

Transport and Passage of Risk

Shipment will be made on customer's account and at customer's risk. Partial deliveries of reasonable quantities are permissible. This does not apply if the customer is a consumer in terms of Article 13 of the BGB (German Civil Code).

Mode of dispatch and dispatch route shall be selected by us at our free discretion if we have no specific wishes from the customer, but do not guarantee to have chosen the cheapest and/or quickest way.

In the case of deliveries the risk shall pass to the buyer as soon as the consignment has left our site or warehouse. This does also apply to partial shipments. If the dispatch should be delayed by reasons which cannot be made liable to us, the risk will get over to the customer on the day when the goods are declared ready for dispatch.

Generally, shipping is made without insurance. Upon the customer's request deliveries will be insured against transport damage at its own expense.

Notice of defects and Liability

The customer is obliged to examine the delivered machines and/or goods immediately after receipt and to put machines into operation.

In case of a any defect the customer is obliged to notify us in writing no later than eight days after receipt of the goods, specifying the defects. Defects which cannot be discovered at first sight, (hidden defects) must be notified in writing no later than eight days after discovery. If a notice of defect, according to the a.m. proceedings, remains undone, then the goods are considered as approved.

If shipping, installation or start-up is delayed for reasons not due to us, warranty lapses 12 months after passage of risk, at the latest.

In the event of a defect of the delivered goods, the customer is entitled to choose elimination of the defects (remedy) or delivery of non-defective goods at our own discretion. If we are unable or unwilling to provide a remedy or replacement delivery, or are these delayed for longer than the appropriate time limit for reasons we are responsible for, or does remedy or replacement delivery fail in sense of § 440, Sentence 2 BGB (German Civil Code), provided that further attempts of subsequent improvement are unreasonable, the customer is entitled to ask for the annulment of the contract or a reduction of the contract price at his discretion.

If the customer is an entrepreneur in the sense of the § 14 BGB (German Civil Code), warranty claim lapses within 12 months after delivery of the goods to the customer or to a place of delivery stated by him, for multiple-shift operations warranty claim lapses after 6 months. An extension of the warranty period to 18 or 24 months is possible under certain circumstances, which must be agreed upon separately. Guarantee promises are not made.

If the object of the contract of purchase is a second-hand device, all warranty claims are excluded, provided that the buyer is an entrepreneur. If the customer is a consumer, the warranty period for the second-hand device is 12 months.

No claims for alleged faults shall be accepted in the event of unsuitable or improper use of the goods delivered, normal wear and tear (especially of wearing parts), use of unsuitable operating materials, etc. Any warranty claim expire, if the buyer uses spare parts and consumables, e.g. inks, cleaning solution etc., which have not been approved by us for the use with the delivered object.

Limitation of Liability, Industrial property rights

We shall be liable in accordance with the terms of the Product Liability Act. Furthermore, we shall be liable for damages according to the statutory terms in case of intent, gross negligence, assumption of a guarantee as well as for an injury to body, life or health for which we are responsible.

If we breach a substantial contractual obligation due to simple negligence, our liability for damages shall be limited to typical contractual, foreseeable damage (compensation for damages in place of performance). In all other cases of liability, claims for damages are excluded due to a breach of an obligation deriving from the contract as well as due to tortious act. In particular, we are not liable for damages consequential to defects or loss of profits or other financial losses suffered by the purchaser.

If we manufacture and deliver goods finished according to customer's instructions and infringe industrial property rights of a third person, the purchaser declares to release us from any claims in this respect.

Data Protection

In accordance with the Federal Data Protection Act, the seller is entitled to process any data on the buyer, received as a result of the business relationship or in connection with the business relationship, irrespective of whether the data comes from the buyer himself or from third parties.

Applicable Law – Place of Venue

The contract as well as the form of its conclusion and all rights and obligations arising from this contract are subject to the German law under exclusion of the United Nations Convention on Contracts for the International Sale of Goods. Any disputes arising from this contract, including about its conclusion and validity, shall be settled at the court of law in Lemgo, respectively Regional Court Detmold (Germany). This provision does also apply to consumer contracts in sense of ROM 1, 6, unless the consumer may be placed at a disadvantage by application of German law according to ROM 1, 6 para. 2.