

ENOTEC GmbH Delivery Terms & Conditions

I. General

1. All deliveries shall be made on the basis of the following General Terms of Sale, Delivery and Payment, which provide the foundation for all offers and agreements, and which shall be regarded as recognised upon placing of order or acceptance of delivery for the duration of the entire business relationship. Deviating terms, which have not been explicitly recognised in writing, shall not be binding for us, even if no explicit objection has been made.
2. Verbal agreements outside this contract have not been made. Verbal agreements with our representatives and employees shall be binding for us upon written confirmation by our management.
3. The following General Terms of Sale, Delivery and Payment shall apply exclusively vis-à-vis entrepreneurs pursuant to Section 14 of the German Civil Code (BGB = Bürgerliches Gesetzbuch).

II. Offers - Prices - Terms of Payment

1. Our offers shall be made without obligation insofar as nothing to the contrary is specified in the order confirmation.
2. Insofar as nothing to the contrary is specified in the order confirmation, the prices shall be ex factory, exclusive transport packaging, which the seller shall invoice separately. Prices do not include the statutory value-added tax (VAT), which shall be shown separately in the invoice with the rate applicable at billing date.
3. Payment must be made net, immediately after receipt of the invoice. Any discount or other payment conditions shall require a specific agreement in writing.
4. If the buyer defaults on payment, interest of 5 % above the base rate within the meaning of the German Civil Code shall be payable on due accounts receivable. All rights shall be reserved for the assertion of any other damage.

III. Delivery

1. Delivery periods shall commence upon receipt of the order and clarification of any technical details.
2. If, as a result of circumstances for which we or an agent are responsible, we are prevented from supplying the object of sale on the agreed date or within the agreed period (delay in delivery) we shall be liable in accordance with the statutory provisions. If we or an agent are not responsible for the delay in delivery, we shall only be liable for foreseeable, typical damage. If the delay in delivery is merely based on an infringement of a non-substantial contractual duty, the buyer may assert lump-sum default damages amounting to a maximum of 10 % of the value of the delivery.
3. Force majeure and events which temporarily prevent us from supplying the object of sale at the agreed date or within the agreed period without any fault being attributable to us shall entitle us to postpone the delivery or service for the duration of the impediment, plus an appropriate run-up period. If such disturbances lead to a postponement of more than two months, any party may withdraw from the contract. Other rights of withdrawal shall remain unaffected.
4. The buyer shall be obliged to accept and take the object of sale. If the buyer defaults on acceptance, we shall be entitled to demand compensation of the resulting damage.
5. We shall be entitled to make part-deliveries.
6. Compliance with our delivery obligation will require compliance by the buyer with its obligations.

IV. Transportation - Insurance

1. In case of dispatch, the risk shall pass to the buyer when the goods are passed to the transport agent. In absence of any other convention, we will determine the manner of dispatch at our discretion, any responsibility being excluded.
2. We shall conclude transport insurance only in response to a wish expressed by the buyer in good time and at his cost.

V. Liability for Material Defects

1. The limitation period for defects to new goods shall amount to 1 year. Used goods shall be sold to the exclusion of any liability for material defects.
2. The claims of the buyer in this respect shall be limited to a claim to rectification of defect or replacement. We shall be at liberty to choose between rectification of defect or replacement. Should the rectification of defect or replacement fail, the buyer may demand reduction or withdraw from the contract. The rectification of defect shall be deemed to have failed if and insofar as a period of grace set for said rectification of defect has passed without result. The conditions to exercise the right of withdrawal shall be determined pursuant to Section 323 of the German Civil Code (BGB).
3. We shall be liable pursuant to statutory provisions insofar as the buyer asserts damage claims, which are based on fraudulent intent, wilful intent or gross negligence, including fraudulent intent, wilful intent, or gross negligence of our representatives or agents. Insofar as we are not accused of wilful infringement of contract, the liability shall be limited to foreseeable, typical damage. Liability for damages shall otherwise be precluded. To this extent, we shall not in particular be liable for damage which has not occurred to the object of delivery.
4. In the event of a rectification of defect, we shall not be obliged to bear the higher necessary expenses for the purposes of rectification, in particular transport, travel, work and material costs. This shall apply insofar as the costs are increased due to the fact that the object of purchase was brought to a place other than the place of performance.
5. The claims of the buyer arising from liability for material defects shall require that the buyer has duly met his duty to inspect the goods and notify any defect in time, i.e. without delay, pursuant to Section 377 of the German Commercial Code (HGB = Handelsgesetzbuch). Hidden defects shall be notified in writing without delay after detection, but not later than 7 days from delivery.
6. Our liability shall otherwise be precluded if the delivered goods have been damaged through wrong or incorrect use, other changes or repairs of a different type which have essentially and negatively impaired the goods. The same shall apply to repairs or changes made without our consent as well as in the case of failure to observe the installation and maintenance provisions.

VI. Recourse against the Entrepreneur

1. If the buyer sells the object to a consumer as part of his commercial business and has to take back this article or reduce the purchase price because of its defectiveness, the buyer shall be entitled to claims against us arising from liability for material defect as follows. If the buyer was obliged to take back the object of sale, we shall be entitled to rectify the defect or provide a replacement within an appropriate period of time. Insofar as and to the extent that the buyer was obliged to make a reduction in price, the purchase price shall be reduced accordingly. The claim to recourse shall exist only to the extent that new articles are affected.
2. The buyer shall also be able to demand reimbursement of expenses that he had to bear vis-à-vis the consumer, if the defects asserted by the consumer existed upon passing of risk to the buyer. Expenses are in particular transport, travel, work and material costs.
3. The buyer shall not be entitled to damages within the framework of this recourse.
4. The obligation of the buyer to notify any defect pursuant to Section 377 of the German Commercial Code (HGB) and Paragraph V.5. shall not be affected by this.

VII. Reservation of Ownership

1. The object of purchase shall remain our property until such times as the accounts receivable in connection with the contract of sale have been settled. If the buyer is a merchant within the meaning of the German Commercial Code (HGB), or any other applicable Commercial Code, we shall reserve the right of ownership to all objects of delivery until such times as all payments arising from the business relationship have been received.
2. The buyer shall be entitled to sell the objects of delivery during the ordinary course of business. However, he shall here and now assign to us, to the amount of the final invoice owed by him for the purchase price (including VAT), all claims due to him from the sale from his customer or third party, irrespective of whether the objects of delivery were sold in a processed or unprocessed state. The buyer shall still be authorised to collect these accounts receivable even after the assignment. Our authority to collect the accounts receivable shall remain unaffected. We shall undertake not to collect the accounts receivable as long as the buyer contractually satisfies his payment commitments and no application for insolvency proceedings is filed. If one of the last mentioned circumstances comes about, the buyer must provide us, at our request, with all information that are necessary to collect the assigned accounts receivable, handover the corresponding documents as well as inform the respective debtor (third party) of the assignment.
3. The object of delivery shall always be processed or reformed for us. If the object of delivery is processed with other objects not belonging to us, we shall acquire coownership to the new object, proportionate to the value of the object of delivery to the other processed objects at the time of processing. The object created by processing shall be subject to the same provisions as the object delivered under reservation. If the object of delivery is inseparably combined with other objects not belonging to us, we shall acquire co-ownership to the new object, proportionate to the value of the object of delivery to the other constituents. If mixing is performed in such a way that the buyer's object is to be regarded as the main object, it shall be agreed that the buyer shall transfer proportionate co-ownership to us. The buyer shall keep the sole property or co-property thus created for us.
4. In the event that the value of the securities exceeds the accounts receivable to be secured by more than 20 %, the seller shall be obliged to release the securities to which he is entitled upon demand of the buyer to this extent. We may choose the securities to be released.

VIII. Altered Circumstances with the Buyer

1. If the financial situation of the buyer worsens considerably, if he disposes of goods we supplied under reservation of ownership in excess of the normal course of business, or if he dissolves his company, we shall be entitled to demand immediate payment of all accounts receivable and to continue to supply only against advance payment or provision of security.
2. In the event of discontinuation of payment or excessive indebtedness of the buyer or upon filing of insolvency or composition proceedings, we shall be entitled either to assert the above rights or to withdraw from the contract pursuant to statutory provisions, as we so choose.

IX. Set-off - Right of Retention

1. The buyer shall only be entitled to offset against our claims if his counterclaims are undisputed or if a legally binding title exists. He shall only be able to assert a right of retention insofar as this is based on claims arising from the contract of sale.

X. Place of Performance - Venue - Various

1. The place of performance for any payment is Gummersbach.
2. If the buyer is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a special asset under public law, Gummersbach shall be the venue. In this event however, we shall be entitled to bring action against the buyer at his place of residence.
3. The business relation vis-à-vis the buyer shall be governed by the laws of the Federal Republic of Germany exclusively, without the United Nations Convention on Contracts for the International Sale of Goods.
4. We shall be entitled to electronically store and process all data on the buyer that refer to the business relationship for the purpose of performance of contract under consideration of the provisions of the German Data Security Act (Bundesdatenschutzgesetz).
5. If any of these terms should be invalid, the validity of the other terms of the contract shall remain unaffected. Invalid terms shall be replaced by the statutory provisions.