

## GENERAL TERMS AND CONDITIONS OF BUSINESS

valid from February 2023

### I. Validity of the Terms and Conditions

1. We conclude contracts exclusively according to our following terms and conditions. They apply to all — including future — contracts with the Customer, even if they are not explicitly reconfirmed. Any provisions deviating from the contents of these terms and conditions shall require our written confirmation. Any terms and conditions of business of the Customer which we do not accept in writing shall not be binding on us. An express objection is not required.
2. Individual agreements with the Customer — insofar as they are made in writing — shall take precedence over these terms and conditions. Legally relevant declarations and notifications which the Customer submits to us after conclusion of the contract (e.g. setting of deadlines, notifications of defects) shall also require the written form. The written form is deemed to be complied by the text form (i.e. electronic mail).
3. These General Terms and Conditions of Business only apply if the Customer is an entrepreneur as defined by § 14 of the German Civil Code (BGB).

### II. Offers, Scope of Delivery

1. Our offers are non-binding.
2. The documents belonging to our offers such as illustrations, drawings as well as data on weights and dimensions are only approximate unless otherwise designated as binding. We reserve the property rights and copyrights to cost estimates, drawings and other documents as well as data irrespective of the form in which they are embodied. These documents may not be made accessible to third parties without our consent.
3. Our order confirmation alone shall be decisive for the scope of delivery. Partial deliveries are permissible as long as it is reasonable for the Customer.
4. The Customer may only assign claims against us with our consent. This shall not apply to claims for payment against us.

### III. Prices and Terms of Payment

1. Prices are net prices plus value added tax. Unless otherwise agreed, prices for deliveries shall be ex works excluding packaging; in the case of deliveries abroad or to a foreign branch of the Customer we shall deliver ex works (EXW) Incoterms 2020.
2. The terms of payment shall be based on the content of our order confirmation.
3. Price adjustments are permissible if we can prove that cost increases for which we are not responsible have occurred after conclusion of the contract.
4. The assertion of rights of set-off and retention by the Customer is only permissible with undisputed or legally established claims.

### IV. Delivery Time

1. The deadlines set in the order confirmation or otherwise agreed with the Customer shall be decisive. Compliance with these deadlines is conditional upon the timely receipt of all documents to be supplied by the Customer as well as compliance with the agreed terms of payment and other obligations. If these preconditions are not fulfilled in time, the deadline shall be extended by the duration of the delay.
2. With deliveries, the deadline is deemed to be met if the operational consignment is dispatched or collected within the agreed period. If delivery is delayed due to reasons for which the Customer is responsible, the deadline is deemed to be observed if notification of readiness for dispatch is given within the agreed time limit. If the goods ready for dispatch are not called off for reasons the Customer

is responsible for, we are entitled to charge a storage fee of 5% of the net invoice amount for each month or part thereof, up to a maximum of 5% of the net value of the goods. We reserve the right to claim a higher amount of costs.

3. If we are prevented from fulfilling our obligations due to the occurrence of unforeseeable extraordinary circumstances which we were unable to avert despite exercising reasonable care, irrespective of whether they occurred at our plant or at our supplier's plant — e.g. operational disruptions, official interventions, delays in the delivery of essential raw and construction materials, energy supply difficulties, pandemic situations — the period shall be extended by the duration of the impediment, provided that the delivery or service is not rendered impossible. In the event of impossibility due to the aforementioned circumstances, we shall be released from our obligation.
4. The delivery period shall also be extended to a reasonable extent in the event of a strike or lockout. Here, too, we shall be released from our obligation to perform the contract if delivery becomes impossible.
5. If the delivery period is extended for an unreasonably long time in the above-mentioned cases, the Customer is entitled to withdraw from the contract. The assertion of claims for damages is excluded.
6. If the aforementioned circumstances occur at the Customer, the same legal consequences also apply to his obligation to accept delivery.
7. Both contracting parties are obliged to notify the other immediately of any disruptions in performance.

### V. Dispatch and Transfer of Risk

1. The risk shall pass to the Customer upon dispatch. If shipment is delayed for reasons within the control of the Customer or its agents, the risk shall pass to the Customer as early as the day on which the Customer is notified that the goods are ready for shipment.
2. Insurance shall only be taken out at the written request of the Customer and against advance payment.

### VI. Rights of the Customer in Case of Defects

1. Claims of the Customer due to defects presuppose that the delivery item does not have the contractually agreed quality or, if such a quality was not agreed, is not suitable for the purpose provided in the contract or for the usual use. In the case of delivery items which are manufactured on the basis of a drawing, the delivery item shall be free of defects if it corresponds to the drawing approved by the Customer.
2. We hereby assign our claims against suppliers of essential third party products to the Customer. The Customer may only hold us liable for defects in essential third party products if a prior out-of-court claim against the third party supplier was unsuccessful.
3. In the event of justified notices of defect, we shall have the right, within a reasonable period of at least 10 working days, to either repair or replace the goods at our discretion. If the subsequent delivery fails, the Customer may reduce the price or — if the lack of conformity is not only minor — withdraw from the contract. In addition, he may be entitled to claim damages or reimbursement of expenses. If the Customer withdraws from the contract, he shall return the delivery item to us and — irrespective of any other claims — pay a reasonable fee for the period of use in the amount of the usual rent.
4. Claims of the Customer for expenses incurred for the purpose of subsequent performance, in particular transport, travel, labor and material costs, shall be excluded insofar as the expenses are increased because the delivery item was subsequently transported by the Customer or a third party to a location other than the place of

delivery, unless the transport corresponds to the intended use of the delivery item or was agreed with us upon conclusion of the contract. Transport costs incurred in the course of subsequent performance shall be borne by the Customer.

5. In the event of the return of the delivery item, the Customer shall pay us compensation for use. This shall be calculated with regard to the usual rent.
6. Claims of the Customer due to defects are subject to a limitation period of twelve months beginning with the handover of the delivery item. This shall not apply where longer periods are prescribed by law in § 438 para. 1 No. 2, § 479 para. 1 and § 634 a para. 1 No. 2 of the German Civil Code, namely for building structures and items for building structures, recourse claims and construction defects. For piping, a defects liability period of 60 months applies, taking into account VDI 2035 (prevention of damage in hot water heating systems). The limitation period for actuators, drives, controls and all moving parts is also twelve months if these are part of a delivery item installed in a building.
7. Claims for damages due to defects shall be limited as follows: We shall not be liable in the event of a slightly negligent breach of immaterial contractual obligations. Our liability for consequential harm caused by a defect is excluded except in cases of intent, gross negligence or breach of essential contractual obligations. Insofar as we are liable for consequential harm caused by a defect, liability shall be limited to foreseeable damage not attributable to extraordinary circumstances. Essential contractual obligations are those whose fulfillment makes the proper execution of the contract possible in the first place and on whose compliance the Customer may rely. The burden of proof of the circumstances justifying a limitation of liability shall be on us.
8. The above limitation of liability shall not limit claims of the Customer for bodily injury or damage to health attributable to us or in the event of loss of life of the Customer or his vicarious agents. This shall also not affect the Customer's claims under the Product Liability Act and claims under a guarantee given by us and in the event of fraudulent concealment of a defect. With regard to these claims, the statutory limitation periods shall apply.

#### **VII. Limitations of Liability, Compensation**

1. The following limitations shall apply to our contractual and non-contractual (tortious) liability as well as to liability for culpa in contrahendo. The burden of proof for the limitation of liability or the exclusion of liability lies with us.
2. We shall not be liable for the slightly negligent breach of immaterial contractual obligations. In the event of a slightly negligent breach of material contractual obligations, the claim for damages shall be limited to the foreseeable damage typical for the contract. In the event of a grossly negligent breach of non-essential contractual obligations, we shall be liable for the foreseeable damage typical of the contract. In all other respects our liability shall not be limited. In the event of a slightly negligent breach of duty due to delay, our liability shall be limited to 5% of the agreed net price. Essential contractual obligations are those whose fulfillment makes the proper execution of the contract possible in the first place and on whose compliance the Customer may rely.
3. A limitation of liability shall not apply if we are liable for injury to life, body or health.
4. Any claims of the Customer under the Product Liability Act shall not be affected by the above limitations of liability.
5. With regard to the statute of limitations sections VI. 6, VI. 8 shall apply accordingly.

#### **VIII. Retention of Title**

1. The delivered goods shall remain our property until full payment of the agreed price.
2. We shall be entitled to withdraw from the contract in case of breach of contract by the Customer and to demand return of the goods delivered by us.

#### **IX. Place of performance, Place of Jurisdiction and Applicable Law**

1. Place of performance for all obligations arising from the contractual relationship is Schloß Holte-Stukenbrock.
2. The place of jurisdiction for all disputes arising from the contractual relationship shall be Schloß Holte-Stukenbrock if the Customer is a merchant, a legal entity under public law or a special fund under public law. However, we shall be free to appeal to the court having jurisdiction for the registered office of the Customer.
3. German law shall apply exclusively. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (UN Convention/CISG) is excluded.

#### **X. Data Protection**

The data protection information on our homepage: [www.ewers.de](http://www.ewers.de) shall apply.

*Status: February 2023*