

General terms and conditions of purchase

§ 1 General, Field of Application

1. These general terms and conditions for purchase apply to all business relations of EEW Special Pipe Constructions GmbH (further referred to as 'EEW') with their suppliers (further referred to as 'supplier'). The general terms and conditions of purchase only apply if the supplier is an entrepreneur, a corporate body under public law or a public separate estate.

2. The general terms and conditions of purchase specifically apply to the purchase and delivery of movables (further referred to as 'goods') irrespective of whether the supplier also produces the goods or acquires them through external suppliers (§§ 433, 651 BGB [German Civil Code]). In their respective version, these general terms and conditions of purchase also apply to future purchasing and delivery contracts for movables with the same supplier as a framework agreement without EEW having to indicate this in every given case.

3. These general terms and conditions of purchase apply exclusively. Differing, opposing or additional general terms and conditions of the supplier are not an integral part of the delivery and business relations and therefore not part of any contract with EEW. The general terms and conditions of purchase also apply if EEW accepts goods without reservation in awareness of any differing, opposing or additional terms and conditions of the supplier. Silence in respect to opposing general terms and conditions does not qualify as consent.

4. Solitary case and/or individual agreements (including side agreements, additions and amendments) take precedence over these general terms and conditions of purchase in every case. The content of such agreements require a written contract or a written confirmation by EEW.

5. Any legally relevant statement or advice, stated toward EEW by the supplier (e.g. setting of deadlines, reminder notes, withdrawal) only take effect if stated in writing.

6. References to the validity of legal regulations are only of clarifying relevance. Therefore, such legal regulations also apply without such clarifications, as long as these have not been immediately amended or explicitly excluded.

§ 2 Formation of a contract

1. The formation of a contract is accomplished by the order through EEW and acceptance of this order through the supplier. Only after the supplier accepts the order, will a sales contract be realised. Amendments or additions to the order by the supplier are regarded as a refusal of the order should the amended acceptance not be confirmed by EEW.

2. Order and acceptance have to be declared in writing. Email or fax suffice as a form of writing. To become effective any verbal agreements also by telephone have to be confirmed in writing by EEW.

3. Orders by EEW have to be accepted by the supplier within 14 days of receipt. After this period, EEW is entitled to withdraw the order. Any services provided by the supplier involved in the formation of the contract are free of charge for EEW.

4. EEW is entitled to insist on alterations of the object of the contract even after formation of the same, as long as such alterations are within a reasonable range for the supplier. The effects of such alterations have to be duly appreciated for both parties, especially concerning additional or reduced cost as well as to delivery dates.

5. All documents, other product descriptions and all technical documentation (e.g. drawings, plans, calculations, references to DIN standards) – also in electronic form- submitted to the supplier by EEW remain in the ownership of EEW. These documents must not be made available to third parties without prior consent by EEW. After complete delivery, all respectable documentation has to be returned to EEW.

§ 3 Delivery deadlines and delayed delivery

1. The delivery deadline is stated with the order by EEW or agreed upon individually. The stated or agreed delivery deadline is binding and to be met by the supplier. Relevant for the adherence to the deadline is the receipt of the goods at the location stated in the order by EEW.

2. The supplier is obliged to instantly inform EEW about any possible delay, its causes and the likely period of delay. Claims resulting from the delay remain unaffected.

3. If delivery deadlines are not met, the supplier has defaulted on delivery without there being an obligation to giving notice of a default. Should a default on delivery occur, the supplier is obliged to inform EEW about the delay in writing. Additionally all legal regulations apply at default on delivery. Notably, in case of default on an additional deadline, EEW is entitled to resign from the contract and to claim indemnification instead of the contractual service. The acceptance and/or payment of the delayed delivery by EEW does not include a waiver of the right for compensation for the delayed delivery.

4. On early delivery, EEW is entitled to return the goods to the supplier. The supplier must pay the cost for the return. Should EEW not return the goods, EEW will store the goods at the supplier's risk and expenses.

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5. Acts of nature beyond control, operational disrupter beyond EEW's control, unrest, regulatory actions and other unavoidable events release EEW from the obligation of a timely acceptance of the goods for as long as the respective incident occurs. During such events, as well as in the following two weeks, EEW is entitled to resign from the contract in total or partially - without affecting other rights -, as long as these events are not of a more unimportant period and should EEW have necessarily acquired the goods elsewhere and therefore has a substantially reduced need for the goods. EEW is not obliged to refund incurred costs to the supplier. These regulations also apply in case of industrial action.

§ 4 Delivery, Packaging, Transfer of Risk

1. EEW has to be informed electronically or by email about deliveries in advance by dispatch note at the latest at commencement of delivery ex works. The dispatch note has to at least contain information on the kind, amount and weight of the goods. Dispatch notes, consignment notes, invoices and all other correspondence have to contain the order number from EEW. A delivery note in duplicate, containing all necessary information for processing the delivery, has to be included in all deliveries

2. Packaging material must only be used in a necessary quantity and will be returned to the supplier without extra cost according to packaging regulations. Returns have to take place at the location of delivery of the goods.

3. Place of delivery is the plant of EEW in Rostock if no other place of delivery has been determined by EEW and the supplier ("place of delivery"). Delivery has to include all items of the order. Partial delivery is generally not accepted if EEW has not explicitly agreed to a partial delivery or this is reasonable for EEW.

4. The risk of accidental loss and accidental deterioration of the goods is transferred to the place of delivery or the contactors of EEW on proper delivery. Before delivery accidental loss and accidental deterioration of the goods is at the risk of the supplier. Members of EEW's staff only act as agents to the supplier.

§ 5 Pricing, Invoicing, Terms of Payment

1. If not stated differently all prices by the supplier include the delivery to the respective place of delivery and all costs for transport, extra expenses and packaging. VAT is not included.

2. Invoices have to be issued in EURO. All invoices have to be transmitted to EEW in duplicate stating the invoice number and other identifications together with all respective documentation and data. The invoice has to be addressed to the address stated in the order. Invoices must not be included in the delivery of the goods.

3. Payment is due at EEW's discretion either within 14 days by deduction of 3% discount or within the term of payment stated in the contract or, if no term is stated, net within 30 days after maturity and receipt of the invoice. Should the receipt of the invoice take place before the receipt of the goods, the terms of payment begin at completion of the delivery. Payment occurs under reserve of invoice verification. Without an explicit reminder notice EEW is not in default.

§ 6 Delegation, Offsetting, Right of Retention

1. Delegation of the entire or partial execution of an order to third parties as well as the delegation of claims arising from contracts require written consent by EEW in advance. This consent requirement does not apply to outstanding debts from this contract. Should claims from this contract have been delegated without consent, EEW is entitled to make payments to the supplier, being the earlier creditor.

2. EEW retains all legal rights of offsetting and retention. The supplier can only offset uncontroversial or legally binding claims or rights of retention against EEW.

§ 7 Retention of Title

1. Any material handed over to the supplier for processing within the terms of the business relation remains in the ownership of EEW. The supplier is entitled to process the material under retention of title according to the proper course of business. In such a case, the following also apply.

2. The retention of title also applies to any products resulting from processing, blending or combining these materials to their full value, while EEW is regarded as producer. Should any goods to which third parties have a right to retention of title be involved in processing, blending or combining, EEW will acquire co-property relative to the invoice value of the processed, blended or combined goods. Apart from this, the same regulations apply for resulting products and for the material handed over under retention of title.

3. The combination of material with other movables understood as the main product, must only take place after written consent is given by EEW. The supplier is liable for loss or damage of EEW's property.

§ 8 Obligation to give Notice of Defects and Warranty Claims

1. EEW accepts goods under reserve of inspection for flaws as soon as feasible within the proper course of business. In case of obvious flaws in the delivered goods, EEW meets the obligation to give notice of defects by noticing the defects within 14 days after receipt of the goods. In case of latent defects, EEW meets the obligation to give notice of defects by noticing the defects within 14 days after detection. The supplier will not object due to late a notice of defect.

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2. The supplier is liable for the delivered goods according to legal regulations on material and legal defects. The deliver is also liable according to the following regulations.

3. EEW is entitled to improve delivered goods at the expense of the supplier if EEW has a special interest in the rapid usability of the goods due to circumstances or especially in case of impending damages and if an improvement through the supplier is not possible due to time constrictions. EEW will inform the supplier of such improvements in writing, by fax or email, in advance.

4. Should any additional costs, such as for transport, labour, assembly or disassembly and material cost or for an unduly extended intake inspection, be incurred by the faulty delivery, the supplier has to bear full cost. Notably the return of faulty goods will occur at the supplier's risk and expenses.

5. The supplier ensures that the goods are free of any third-party rights and that by delivery no third-party rights are infringed. The supplier has to ensure usability of the goods abroad as well as at home including any possible repairs, amendments or alterations. In case third-party rights are infringed, EEW has the right to be excluded of any third-party claims against the supplier irrespective of culpability. Additionally EEW is entitled to compensation for any incurred damages by the supplier.

6. Warranty claims are valid within 36 months of transfer of risk - except in cases of malice. The validity of longer legal terms remains unaffected by this. If the supplier offers compensations by further delivery the limitation period for the goods delivered in compensation begins on their delivery, if the supplier has not stated clearly and rightfully that compensation only occurred as an act of goodwill to avoid any disputes or to maintain a further business relation.

§ 9 Obligation for Information, especially on Export restrictions

1. Unaffected by any other obligations for information stated in the contract, every party is obliged to support the other party in submitting all necessary information and documentation (further referred to as 'information') in adherence to valid export control laws or any other requirements by the authorities in this context, especially in regard to approval procedures.

2. In particular the supplier has to inform EEW if any delivered goods or parts are subject to commodity export restraints according to German laws (particularly amendment 1 part I amendment AL of German foreign trade regulations, AWV) or to European laws (particularly amendment I Dual-Use VO 428/2009). In which cases parts of goods are considered main parts is defined equally in the AWV and in no 2 of the general annotations to amendment I Dual-Use VO 428/2009.

3. The obligation for Information is not excluded by possibly afore agreed confidentiality obligations. If necessary an exemption from afore agreed confidentiality obligations can be insisted on should applicable export control laws demand that technical details are transmitted to respective authorities.

§ 10 Delivery of Goods not restricted by export regulations

The supplier pledges to preferentially use goods and main parts which do not underlie export restrictions as stated in § 9 part. 2.

§ 11 Further Liability

1. If not stated differently in these general terms and conditions of purchase the supplier is liable in case of infringement of any contractual and extra-contractual obligation according to valid legal regulations.

2. The supplier has to take over all costs and to free EEW from their liability on first request should EEW be made liable for any faulty goods or for breeching safety regulations, if the delivery of goods by the supplier was faulty or the damage was causally determined by this. In case of fault-based liability, this however only applies if the supplier has caused the damage. As soon as supplier is responsible for the cause of damage, he has to prove absence of fault.

3. Indemnity claims can only be asserted against EEW if intent or gross negligence can be proven. In case of culpable violation of fundamental contractual obligations, EEW is liable for any reasonably predictable damages typical for the contract. The afore stated liability restrictions do not apply in cases where EEW is liable according to the laws for product liability for person or material damages and in case of injury of life and health and of bodily harm.

§ 12 Conditions of the contract and secrecy

1. In addition to any legal right to resign EEW is eligible to instantly resign from the contract should the supplier terminate delivery to his customers, a noticeable deterioration of pecuniary circumstances of the supplier occur or threaten to occur, if the fulfilment of a delivery duty toward EEW is endangered, in case of non-solvency or if the supplier suspends payment. EEW also has the right to resign from the contract if the supplier has applied to open insolvency proceedings over his property or similar proceedings for a settlement of debts have been requested.

2. Unless he is not responsible for the instance from which the right to resign arose, the supplier has to reimburse EEW for resulting damages should EEW exercise the afore described right to resign. This does not affect other legal claims.

3. EEW also has the right to withdraw from the contract or to terminate the contract if the goods which are to be delivered are meant to be incorpo-



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rate in a construction which is to be shipped to an EU member state or is destined for export to a third country, if the relevant authorities

- a. refuse the transboundary shipment / export clearance or
 - b. do not give necessary clearance (export / import) for the delivery of the entire construction within 3 (in writing three) months of the scheduled delivery date.
- 4.** EEW may also resign from the contract with the supplier if the buyer of the entire construction, in which the goods to be delivered are to be incorporated, performs any acts which encourage, imply or cause a breach of the valid export control laws of the Federal Republic of Germany or the European Union, particularly if there are any valid indications that the goods are not to be utilized in the described way but instead for illegal purpose.
- 5.** The supplier is obliged to treat any commercial or technical information acquired in the business relation with EEW confidentially. He has to commit his subcontractors and suppliers accordingly. This obligation also continues after the business relation is terminated.

§ 13 Place of Fulfilment, Choice of Law and Jurisdiction

- 1.** Place of fulfilment is the location to which the goods are to be delivered. Place of fulfilment for payments by EEW is the place of business of EEW.
- 2.** The legislation of the Federal Republic of Germany under exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) applies to these general terms and conditions of purchase.
- 3.** Under the therefore applicable law, the legal norms under exclusion of the respective international legislation are to be understood, as long as the legislation of the Federal Republic of Germany does not define a different one.
- 4.** The competent courts for the place of business of EEW are the sole place of jurisdiction for any disputes arising from this contractual relationship. EEW also has the right to take legal action at the general place of jurisdiction of the supplier.
- 5.** Should one or more of the stated terms conditions of purchase be legally void due to legal regulations, the other terms and conditions remain unaffected. EEW and the supplier are both obliged to replace legally void regulations by other regulations that meet the same economic purpose of the legally void regulation.