



ECS Eich Maschinenbau GmbH

General terms and conditions

§ 1 General - Scope

1. The terms and conditions of ECS Eich GmbH are applicable to all current and future business relationships. Purchasing conditions from the buyer which deviate from this are hereby explicitly rejected. They shall only form part of the contract where an express written declaration to this effect is received from the seller. Verbal agreements should always be based upon the seller's terms and conditions, provided that the contractual partner is a merchant. The terms and conditions of ECS Eich GmbH also apply if it carries out delivery without reservation, despite being aware that the customer's T&C conflict with or diverge from its own terms.
2. Even if acknowledged, diverging, conflicting or supplementary general terms and conditions shall not be considered part of the contract unless their validity is explicitly agreed to in writing.
3. Consumers, in the sense used in these terms and conditions, are natural persons with whom business relationships are entered into, but to whom neither a commercial nor independent professional function is assigned.
4. Enterprises, in the sense used in these terms and conditions, are natural or legal persons or legally responsible private companies, with whom business relationships are entered into, in exercise of a commercial or independent professional function.

§ 2 Conclusion of contract

1. The procurement contract governed by the following terms and conditions comes into force on receipt of the order confirmation.
2. Quotation documents, draughts, cost estimates, etc. which were supplied to the customer are subject to the protections of copyright and must be used in conjunction with procurement negotiations and the procurement contract. In particular, all reproduction or dissemination by the seller to competitor companies is forbidden. Should a procurement contract fall through, the seller has the right to demand return of the documents it has already sent, at any point. The technical data in the figures (diagrams, images, tables of weights and measures, etc.) which form part of the quotation only contains approximate values. Its sole purpose is to describe the product. It may only be looked upon as an assured characteristic if it is explicitly designated as such in the quotation.
3. The goods ordered are supplied strictly without any separate protective devices. The customer may still choose to order such protective devices from the seller at additional cost.
4. The goods ordered are only supplied packaged if this seems warranted, based on the experience of the seller. Any packaging materials will be invoiced to the customer at cost. For economic reasons, packaging will only be taken back in exceptional cases, following agreement with the customer.
5. The confirmed delivery deadline is not binding. In particular, it is dependent on the settlement of all payment obligations from earlier deliveries to the same customer. Where delivery periods are agreed, such periods shall only commence once the customer has made available the technical documentation which they were to provide, complied with all the necessary formalities, and paid the agreed deposit (§ 2 No.5). Events or circumstances over which the seller has no control (e.g. incomplete or late deliveries from suppliers, fire, legal and official restrictions and delivery commitments, operational disruptions, lockouts, strikes, transport and storage difficulties, etc.) will result in the delivery period being extended by the period of time during which the seller was prevented from carrying out normal operations. If delivery from the seller is delayed owing to simple negligence, the customer has no claim to compensation for damages caused by this delay. The customer's claims for damages for non-performance due to a delay in delivery must, in any case, be restricted to the extent of the foreseeable damage. In the event of simple negligence on the part of the seller, claims for damages are also limited to a maximum of 50% of the damage which occurs. The seller shall not be held liable for the negligent breach of minor contractual obligations. If delivery from the seller is late by more than one month, the customer - provided they are a merchant - is only entitled to withdraw from the contract and file claims for damages if they indicate their intent to withdraw/claim for damages to the seller in writing, and if the seller then fails to make good on the delivery within one month of receipt of this notice.

§ 3 Payment

1. Unless otherwise agreed in writing, the stated or otherwise arranged prices are quoted ex-works, including loading at the works, in cash and strictly net. The specified prices shall be those which are valid when the order is received. Should the prime costs for the services of the seller or associated costs (particularly freight charges, taxes, etc.) change after the contract has been concluded, the seller is entitled to adjust prices accordingly, provided that the contractual partner is a merchant. Regardless of the confirmed unit prices, a minimum order value of EUR 100.00 is agreed.
2. The seller receivables are due in full at the time of the transfer of risk. If the value of the order exceeds EUR 12,000.00, a sum of 30% shall be charged on receipt of the order confirmation, 60% on delivery, and 10% after invoicing or commissioning, and due no later than 30 days after the date of invoice. As a general merchant, if the customer fails to abide by the payment conditions without warning, and the seller claim is not settled within ten days of the respective invoice date, the customer is in default of payment. For the duration of the default period, the customer must pay interest charges at 8% above the current base rate. The seller reserves the right to prove and assert higher damages due to the default.
3. Provided that the seller is prepared to accept a draft or cheque, this shall only be on account of payment. All expenses shall be borne by the customer. The seller is not obligated to observe regulations pertaining to drafts or cheques. Any deferment in the acceptance of drafts shall no longer apply, for all drafts by the same customer, if even a single draft is not honoured on the due date. In this case, the full amount shall be payable immediately and enforceable.
4. The customer only has the right of set-off, if his alleged counter claims have been judicially determined or recognised by the seller. The customer may only exercise the right to retention, if the customer's alleged counter claims have been judicially determined or recognised by the seller.



5. If delivered goods are returned, the seller is entitled to charge the customer a flat rate up to 20% of the value of the goods to offset the expense. The seller reserves the right to apply an accordingly higher percentage to account for depreciation.

§ 4 Transfer of risk

1. The risk of accidental loss or accidental depreciation of the goods shall be transferred to the buyer when they are handed over by the seller; in the case of a purchase for delivery this will be when the object is delivered to the haulier, the freight carrier or any other person or establishment designated to perform the shipment duties.
2. The delivery is deemed to have been made, even if the buyer is late with their acceptance.

§ 5 Insurance

There is no requirement on the part of the buyer to take out transport insurance. If expressly requested to do so, the seller is prepared to offer transport insurance with the usual conditions at the cost of the customer. Where pumps, and other machine parts or accessories are delivered for assembly by the customer, these will also be insured for reshipment under the above mentioned conditions.

§ 6 Retention of title

All goods supplied by the seller are subject to retention of title. The seller shall retain ownership of the goods until all claims resulting from the existing business relationship have been fully settled. Ownership of the goods shall only be transferred to the customer once they have fulfilled the sum of their obligations for all goods deliveries from the seller, including accessory claims, and the seller can no longer be claimed against for any securities given. This applies even if the buyer indicates that they have paid the purchase price for certain deliveries. Until further notice, the customer is entitled to resell the goods in the course of ordinary business operations. They shall not be entitled to pledge such goods or transfer ownership thereof by way of security. The customer shall immediately assign all claims resulting from the resale of the goods transferred to it under retention of title to the seller, up to 120% of the final invoiced amount (including VAT) with priority over any other claims. The seller shall accept the assignment. After assignment, the customer is authorised to recover such debts. The seller reserves the right to recover these debts personally, where the customer fails to properly discharge his payment obligations and is in default of payment. Where there exists a current account relationship between the seller and the customer, the assignment of future claims also extends to the recognised balance as well as, in the event that the customer is declared bankrupt, to the existing "casual" balance. The customer receives payments as the authorised agent of the seller. The former is required to keep such payments for the later separate. Machining and processing by the customer are always carried out by order of the seller, without this resulting in obligations for the seller. Where processing or modification of the supplied goods produces a new object, the seller counts as the manufacturer under § 950 BGB. Where the combination or amalgamation of the goods subject to retention of title and other moveable objects results in a change of ownership in accordance with §§ 947, 948 BGB, any property rights of the customer are immediately assigned to the seller. The customer must store the new object for the seller free of charge, and where the customer is entitled to enrichment claims in accordance with § 951 BGB (in conjunction with the machining or processing of the delivered goods), these are also assigned immediately to the seller. Where the value of the securities given by the seller (assigned receivables and transfer of ownership) exceeds the total amount of their claim by more than 20%, on request by the customer, the seller is obliged to transfer back receivables or grant joint ownership to the corresponding level and of its own choice.

§ 7 Warranty

If a legitimate and timely complaint of a defect is made, the seller is first entitled to provide warranty either by repair or replacement, according to its own choice.

Should this remedy ultimately fail, the customer can demand either a reduction in payment or to withdraw from the contract, according to its own choice. In the event of a minor breach of contract, particularly in the case of minor defects, the customer is however not entitled to withdraw.

The customer must notify the seller of the defect in writing within a period of two weeks from receipt of the goods, otherwise the assertion of the warranty claim is excluded. The full burden of proof for all evidence of the claim rests with the customer, particularly for the defect itself, the time of its discovery, and the timeliness of the complaint.

After a remedy has failed, should the customer opt to withdraw from the contract due to a defect, they will not be entitled to claim for damages caused by the defect.

The term of the warranty is one year from the transfer of risk.

The product description issued by the seller is the only agreed account of the quality of the goods. Public statements, claims or advertising made by the seller, on the other hand, do not represent contractual information on the quality of the goods. The goods will meet the quality stated in the order confirmation.

Basis of the calculations for the performance of the system is a material used with a specific gravity of at least 2,0 and a dry matter content of less than 0,8 %.

If the settling of the water or the material used is not sufficient to ensure correspondingly to bring clarification, the seller is entitled to use aids. This is not a lack of investment represents.

If the customer receives a copy of the installation manual containing defects, the seller is only obliged to provide a copy which is free of these defects, and then only if the defect in the installation manual runs contrary to the sense of proper installation.

The seller does not provide any guarantees to the customer, in the legal sense. Manufacturer's guarantees are unaffected by this.

All claims to warranty are voided if the customer carries out, or has others carry out, modifications on the delivered object without the prior approval of the seller, or repairs without first providing the seller with a reasonable opportunity in writing to remedy the issue.

§ 8 Withdrawal



The seller is entitled to withdraw from the contract if, due to circumstances laid down in § 2 No.5, for which the seller has no responsibility, it is not possible to guarantee that the goods ordered will be produced within an economically justifiable period of time. The seller is entitled to the same right if, due to circumstances prosecutable by law (information, non-payment of the first invoice amount § 3 No.2, bounced draft, etc.) there are grounds to assume that the receivables owed to the seller have been seized, and the customer does not produce an appropriate security within a period to be determined by the seller. The seller is also entitled to the right to immediately withdrawal if the customer becomes insolvent. This applies from the time when they file for bankruptcy.

§ 9 Limitations of liability

Claims for damages made by the customer, on any eligible legal basis, may only be asserted if the seller or their agents acted wilfully or with gross negligence. These limitations on liability do not affect claims by the customer due to product liability. Claims for damages by the customer due to defects lapse after one year from the transfer of risk/delivery of the goods. In particular, the seller is not liable for loss of profit, costs associated with production outages or other financial losses of the customer. Any further liability than that provided for by the above provisions is excluded, without consideration of the legal nature of the claim being asserted. Since the liability of the seller is restricted, this also applies to the personal liability of the staff, workers, employees and agents of the seller. No liability is accepted for the slightly negligent breach of minor contractual obligations. Claims for damages by the customer due to defects lapse after one year from handover of the object.

§ 10 Place of performance and court of jurisdiction

The laws of the Federal Republic of Germany apply. The provisions of the UN Convention on Contracts for the International Sale of Goods shall not be applicable. If the customer is a merchant, a legal person under public law or a public-law entity, the sole court of jurisdiction for all disputes relating to the contract is the seat of business of the seller. The same applies if the customer has no general place of jurisdiction in Germany or if their domicile or customary residence when the proceedings were brought is unknown. The seller is also entitled to bring action against the customer at their registered office or at a subsidiary.

§ 11 Final provisions

Should individual provisions of the contract with the customer, including these general terms and conditions, be or become either wholly or partly invalid, this has no bearing on the validity of the remaining provisions. The wholly or partly invalid condition is to be replaced by a regulation the commercial success of which most closely approaches that of the invalid provision. All changes or additions to the contract must be made in writing (must at least be confirmed in writing). Ancillary verbal agreements shall not apply.

Wetzlar District Court
HRB 4259
ID NO.: DE16650006 6

Managing Director
Matthias Eich
Tel.: +492772/572-0
Fax: +492772/572 5 –25

ECS Eich Maschinenbau GmbH
Zur Dornheck 10
D-35764 Sinn