

Conditions of Sale, Delivery and Payment of Ecotex GmbH & Co. KG

1. GENERAL

- 1.1 The following conditions apply exclusively to all deliveries, services and offers; we shall not recognise any conditions of the customer which conflict with or deviate from our conditions, unless we have given our express prior approval in writing. This shall also apply in the event of our performing the delivery to the customer without reservation, in the knowledge of any conditions of the customer which conflict with or deviate from our conditions.
- 1.2 Any arrangements made verbally or by telephone must be confirmed by us in writing in order to be valid.
- 1.3 We shall provide guarantees only by special agreement. A reference to DIN or other standards serves merely as a description of goods, and does not represent any guarantee.
- 1.4 Unless agreed upon otherwise, the customer shall be responsible for procuring documents which we require for any possible foundation and/or assembly drawings. The customer shall likewise be responsible for ensuring that any possible required building approval is secured in good time.
- 1.5 We reserve the title and copyright to any drawings or technical documentation handed out to the customer by us. These may not be used, copied, reproduced or made accessible to third parties without our explicit consent.

2. OFFER / OFFER DOCUMENTS

- 2.1 Our offers are nonbinding.
- 2.2 The illustrations, specified dimensions and weights shown in our catalogues and other printed materials merely represent approximate values. No responsibility is taken for the accuracy of this information.

3. PRICES / CONDITIONS OF PAYMENT

- 3.1 Unless otherwise agreed, our invoices must be settled as follows, net without any deductions:

25% on confirmation of order,
75% 14 days before loading net.

Spare parts and invoice amounts of less than EURO 15.000,00 must be settled net/net in a single payment following receipt of the respective invoice.

Payments shall be considered settled only on the day on which the amount is credited to our account.

- 3.2 In the event of a change in the price basis occurring between acceptance of the customer's order and the date of delivery, for which we cannot be held responsible, we reserve the right to amend our prices correspondingly. However, this shall apply only to delivery deadlines of more than 4 months and for price amendments of up to 10 %. In the event of higher rates, a renewed price agreement is required.
- 3.3 The customer shall be entitled to offset or retention only if his counterclaim is undisputed or has been settled by a court of law.
- 3.4 We are not obliged to accept bills of exchange or cheques. Insofar as bills of exchange or cheques are accepted by us, this shall be done subject to the reservation that the full sum is received by us (discharge of obligations).
- 3.5 In the event of a deterioration in the customer's financial situation causing reasonable doubt on his ability or willingness to pay, particularly in case of protests of a bill or a cheque, considerable payment default, overdue payments for previous deliveries or consistently late payments, we shall be entitled – subject to any other rights we are entitled to – to demand prepayment or provision of security and to retain delivery and/or service until receipt of prepayment or security, as well as to withdraw from the contract partially or fully in case of insufficient prepayment or security. In each of these cases our full contractual claims will become due immediately. In the event of payment default, we shall charge default interest set at the level of standard bank lending rates plus commission and expenses.
- 3.6 Should the customer fail to accept the goods by the contractually agreed deadline, he shall nevertheless be obliged to perform the payments dependent upon the delivery or the commissioning of the goods by the agreed deadlines, as if the delivery had indeed taken place. The storage of the goods shall be performed at the cost and at the risk of the customer.

4. RESERVATION OF TITLE

- 4.1 The objects of the delivery shall remain our property until the fulfilment of all our claims against the customer arising out of the business transaction. Insofar as the value of all security interests to which we are entitled

exceeds the level of all secured claims by more than 20 %, we shall upon the request of the customer release exceeding parts of the security interests as per our choice.

- 4.2 During the duration of the reservation of title, the customer shall be prohibited from pledging or assigning the goods subject to retention of title as security. The resale thereof shall be permitted only within the framework of the ordinary course of business. In case of a resale of goods subject to retention of title, the customer shall assign to us his claims against his buyer to the amount as specified in Fig. 4.1., regardless of the goods being resold without or after processing. The customer shall remain entitled to collect the claim even after his assignment thereof. Our right to collect the claim ourselves remains unchanged, however, we shall retain collection as long as the customer meets his payment obligations without delay and, in particular, has not filed for insolvency or bankruptcy. Should this be the case, we may demand from the customer to disclose the assigned claims and their debtors as well as all information relevant for collection, to hand over all relevant documents and to inform the debtors of the assignments (third parties), which we are also entitled to ourselves.

- 4.3 Any treatment or processing or alteration of the goods by the customer shall at any time be on our behalf as manufacturer as per § 950 BGB, without any obligation on our part. In this case, our expectant right on the contractual goods shall also be sustained with respect to the altered goods. Should the contractual goods be processed or conjoint with other goods, we shall in principle acquire a shared ownership of the new goods, which in either case will be proportional to the value of the goods subject to retention of title compared to the new goods. Should the customer become sole owner of the new goods, he shall grant us a proportional shared ownership as per the stated values and shall store the goods free of charge for us. In case the new goods created by processing or conjoining should be sold, the agreed assignment in advance is valid only to the amount of the value of the goods subject to retention of title.

- 4.4 In the event of pledging or other disposals or in the event of interventions of third parties, the customer shall notify us immediately.

- 4.5 In the event of the customer violating his obligations, in particular in the event of payment default, we shall be entitled – following the unsuccessfully expiry of a reasonable period of grace granted to the customer – to withdraw from the transaction and to take back the goods; the statutory provisions concerning the dispensability of a period of grace shall remain unaffected. The customer shall be obliged to surrender the goods. In the event of the customer falling behind with payment, either partially or fully, or suspending payment, or causing reasonable doubt as to his ability or willingness to pay, he shall no longer be entitled to dispose of the goods supplied by us. In such case we may withdraw from the customer the entitlement to collect the claim from the recipient. Furthermore, we shall be entitled to demand disclosure of the recipient of the goods, inform him of the claim being assigned to us, and collect the customer's claims against the recipient of the goods.

5. DELIVERY / DELIVERY PERIOD

- 5.1 The dispatch of the goods will be effected either ex our head office, or ex manufacturer or sub-supplier, subject to our choice, exclusively at buyer's risk and - unless explicitly otherwise agreed – at buyer's charge.

- 5.2 It shall be incumbent upon us to choose the dispatch route, the method of dispatch and the packaging or any protection.

- 5.3 The delivery shall be performed, subject to our choice, free warehouse, free yard of the place of utilization or free destination of the customer, although excluding unloading at the works and without transport to the place of installation. Following special agreement, we can also deliver inclusive installation and assembly of the components (construction site assembly). The cost of any possible required masonry breakthroughs, furnishing of position bearings, slides, etc. shall be borne by the customer. The customer must inform us at the time of the placement of the order of all relevant details pertaining to the execution of the transportation, and must notify us without delay in the event of there being any subsequent changes in the transport conditions.

Disadvantages, losses as well as additional costs which result from the fact that the place of destination or the yard of the place of utilization cannot be accessed without hindrance using the standard means of transport selected by us shall be borne by the customer. In the case of delivery free to the yard of the place of utilization, the customer shall in particular at his own expense take steps to ensure that the transport into the building is possible without difficulty through the gates or through the masonry breakthroughs which are to be opened up or sealed by him, furthermore that the necessary auxiliary staff are available at his expense to assist with the unloading and onward transport of the goods.

- 5.4 Delivery times and delivery dates are only binding if they have been explicitly agreed upon in writing. If the goods have been reported ready for dispatch to the customer, or have left our store respectively the chosen location of dispatch as per Fig. 5.1 before the delivery time has expired, the delivery time is considered to have been met. Fixed delivery times and dates can only be kept if the customer meets all his contractual obligations timeously and in full.

5.5 The delivery period shall be reasonably extended – including within the framework of a delivery delay – in the event of retrospective amendments of the agreement which could affect the delivery period, or unforeseen obstacles arising which we, notwithstanding the exercise of reasonable diligence, were not able to prevent - regardless of whether these occurred at the works or at our subcontractors –; e.g. works stoppages, official interventions, energy supply disruptions, delays in the delivery of key components, etc. The same shall apply in the event of a strike or shut-out.

5.6 In case of failed delivery by a pre-supplier through no fault of our own, we shall be entitled to withdraw from the contract. In this case, we shall inform the customer without delay about the non-availability of the goods, and shall refund his considerations if such have been made.

5.7 Partial deliveries shall be permissible unless otherwise agreed.

5.8 If the customer fails to collect the goods or refuses to accept the goods we are entitled after one written demand for collection within a reasonable period of time to refuse fulfillment of the contract and to claim compensation in the amount of 20 % of the agreed or otherwise effective sales price of the goods not collected or refused by the customer, whereas both parties may provide evidence to establish a higher or lower claim.

6. LIABILITY FOR DEFECTS

6.1 We guarantee that the object of the delivery shall be free of defects in accordance with the product description and the respective state-of-the-art. Changes to the construction and/or design which diminish neither the functionality nor the value of the object of the delivery shall remain reserved and shall not constitute grounds for complaint. Defects which diminish the value and/or the functionality of the delivered goods only marginally shall not constitute grounds for complaints.

6.2 Warranty claims will not be considered if the customer does not lodge a written complaint for apparent defects within two weeks following receipt of the delivery or handing-over. The foregoing does not negate the customer's further statutory obligation to investigate and complain about any deficiencies in accordance with § 377 HGB. Any claims from a damage due to grossly negligent violation of contract by us or by one of our statutory agents or vicarious agents remain unaffected by this. Complaints lodged shall not delay maturity of our purchase price claim or the agreed remuneration unless their validity has been either confirmed by us in writing, or recognized by declaratory judgment.

6.3 Should the delivered object be defective, or should it fail to correspond to a guaranteed characteristic, then at our discretion we shall correct the defect within a reasonable deadline and free of charge either through subsequent rectification or by delivering a defect-free object (subsequent performance). The customer must grant us or our authorized representatives the time and opportunity for this.

6.4 Should the subsequent performance prove ineffective, or should it not be performed within a reasonable extension period granted to us by the customer, then the customer may demand that the remuneration be reduced or may withdraw the order. In the event of the delivered objects having been used, the customer shall be obliged to pay a reasonable fee for the period of use.
Subsequent performance shall be considered proven ineffective after the second unsuccessful attempt, unless otherwise induced by the nature of the object, of the defect or by force of circumstance. Once the subsequent performance has failed or been refused by us, or if we have not met an adequate deadline given by the customer, the customer shall be entitled to reduce the remuneration or withdraw from the contract. Any claims for compensation shall remain unaffected thereby.
Parts that have been exchanged in the course of subsequent performance shall pass into our ownership.

6.5 Claims made by the customer in consideration of expenses incurred for the purpose of the subsequent performance (Fig. 6.3) or reversal of the settlement following withdrawal from the agreement (Fig. 6.4), in particular transport costs, travel costs, labor costs and material costs, shall be excluded insofar as the expenses are increased as a consequence of the object of the delivery having been installed at a location that is difficult to access. This shall apply correspondingly if the object of the delivery has been installed outside the Federal Republic of Germany. The exclusion of liability shall not apply in cases in which under the German Product Liability Act liability is established for injury to persons or damage to property used for private purposes.

6.6 Losses caused by false or defective installation, commissioning, treatment, operation or maintenance or by the use of unsuitable or other than the prescribed media shall not establish any grounds to bring claims based on defects. The same shall apply in the event of overloading, corrosion, lime scale formation or similar, except in the event of our being liable for such losses under Fig. 7.

6.7 Claims based on material defects shall become statute-barred after 12 months, calculated from the day of the acceptance of the object of the delivery.

This shall not apply to the extent that the law in accordance with §§ 438 Para. 1 No. 2 (building structures and objects for building structures), 479 Para. 1 (right of recourse) and 634 a Para. 1 No. 2 (structural defects) of the German Civil Code prescribes longer deadlines, as well as in cases of fatal injury, personal injury or the impairment of health, in the event of a willful or grossly negligent breach of obligations on our part, or in the event of the fraudulent non-disclosure of the defect. The statutory regulations governing the suspension of expiration of prescription, the suspension and the recommencement of the statute of limitations shall remain unaffected.

6.8 In other respects, Fig. 7 shall apply to claims for damages. Any further claims of the customer brought on the grounds of defects shall be excluded.

7. LIABILITY

7.1 Warranty claims shall be excluded completely for used machines, unless explicitly agreed upon otherwise.

7.2 We shall be liable for losses which arise other than at the object of the delivery itself only

- in the event of willful intent or gross negligence,
- on the grounds of culpable fatal injury, personal injury or impairment of health,
- due to the fraudulent non-disclosure of a defect,
- under the German Product Liability Act for injury to persons or damage to property used privately.

7.3 Furthermore, we shall be liable on the grounds of the violation of essential obligations which are characteristic for such contracts, including in the event of minor negligence. In this event our liability shall, however, be limited to the losses which could reasonably be expected to be incurred at the time of the conclusion of the agreement.

7.4 The aforementioned regulations shall apply to the same extent to our vicarious agents.

7.5 If, with our approval, the customer cancels an order completely or partially, the following amounts shall become due immediately, as a percentage of the agreed prices respectively our scheduled prices for the delivery cancelled:

<u>receipt of cancellation</u>	<u>cancellation fees</u>
- during the month of the delivery	25%
- up to 60 days before delivery	20%
- more than 60 days before delivery	15%

8. PLACE OF PERFORMANCE / PLACE OF JURISDICTION / MISCELLANEOUS AGREEMENTS

8.1 The place of performance shall be the domicile of our company, unless explicitly otherwise agreed upon. The agreement solely on the place of delivery shall not count as an agreement on the place of performance.

8.2 Depending upon the value under dispute, the place of jurisdiction for any claims of both parties arising from the supply relationship shall be the local court at Andernach or the district court at Koblenz. We reserve the right to seek redress before the court which has jurisdiction at the domicile of the customer.

8.3 The laws of the Federal Republic of Germany shall have exclusive applicability, whereas the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

8.4 In the event of any of the provisions contained within these Terms and Conditions of Sale, Delivery and Payment, or a provision within the framework of any other agreement concluded between the Purchaser and us being or becoming invalid, this shall not affect the validity of all other provisions or agreements. This shall not apply if adherence to the agreement constitutes an unreasonable hardship for one of the parties thereto. The invalid provision or agreement shall be replaced by such lawful provision or agreement coming closest to the economic intention pursued by the invalid provision or agreement.

9. DATA PROCESSING CLAUSE

9.1 We would like to point out to our customers that all customer data obtained in connection with the conclusion and execution of contracts will be recorded and processed in line with data protection provisions. The data will not be made available to third parties, unless we are obliged by law to do so.