

**General Terms of Sale and Delivery of  
eks Engel GmbH & Co. KG**  
Version: April 2021

**I. Authoritative Terms, Contract Conclusion**

1. All orders from companies as well as from legal entities of public law and public-law special funds are subject exclusively to the following terms except when agreements to the contrary are made in a particular case. Contrary terms of sale and purchase of the Buyer are not valid even when we have not specifically objected to their validity. The Buyer accepts our terms with the issue of the order or on receipt of the shipment.

2. An order is binding on us (contract conclusion) only after our written confirmation or actual delivery. Changes, supplements or other ancillary agreements must be given in writing.

**II. Offers, Composition, Prices, Price Revisions Reserved**

1. Our offers are not binding, estimates are not binding.

2. We reserve the right to ownership and/or the copyright to all offers and estimates submitted by us as well as to all drawings, illustrations, invoices, pamphlets, catalogues, models, tools and other records and aids supplied to the Buyer. The Buyer may not without our explicit consent pass these on to a third party, either physically or in terms of their contents, nor publish them, make use of them or allow their use by a third party, or reproduce them. On our demand, he must return these objects to us in their entirety and destroy any copies possibly made when these are no longer required for the ordinary course of business or when negotiations do not result in the conclusion of a contract. The same applies to records supplied to us by the Buyer for the purpose of contract performance. We are, however, permitted to pass them on to a third party to whom we have subcontracted deliveries.

3. All prices are quoted in Euro ex works and exclude packing, freight, postage, customs duties and VAT at the currently applicable rate.

4. The elaboration of production, installation and other project records must be remunerated separately if no contract of sale results or if the costs of compilation are disproportionately high to the value of the sale.

5. For all orders – including call-off and multiple delivery orders – we are entitled to pass on to the Buyer any increases of material and wages between contract conclusion and delivery within the limits of and for the purpose of compensating these price increases.

**III. Shipping, Transfer of Risk, Insurance**

1. When not agreed otherwise, our deliveries are "ex works".

2. Shipments – also when freight is prepaid – are made at the risk of the Buyer. We shall not be responsible for damage or loss during shipment. Shipping insurance is concluded by us only at the explicit request of the Buyer and for his account.

3. If a shipment is delayed due to circumstances beyond our control, the risk is transferred to the Buyer as of the date at which shipping readiness is notified.

**IV. Payment Terms, Offset and Rejection**

1. Unless otherwise agreed in individual cases our claims are payable in Euro free from postage and expenses directly after receipt of our invoice or equivalent statement of receivables but latest 30 days from due date and receipt of our counterperformance. Thereafter we charge annual interest in an amount of 9 percentage points above the current basic interest rate, subject to a possibly higher damage due to delay.

2. We are entitled to invoice our services electronically. The Buyer will receive our invoice electronically at the e-mail address provided by him, thereby it shall be deemed to have received him; he waives postal delivery. For his part the Buyer is obligated to ensure that our electronic consignment of the invoice by e-mail can be duly delivered to the e-mail address provided by him by, for example, adapting his technical equipment such as filter programs or firewalls accordingly. Any automated electronic replies, such as absence notes, cannot be taken into account by us; they do not prevent valid delivery of the invoice. The Buyer is obligated to inform us immediately in writing or in text form of any change in the e-mail address to which the invoice is to be sent. We are not liable for any potential damage that may result from an increased risk of electronic invoicing by e-mail compared to sending the invoice by post. The Buyer bears any possibly increased risk of access by unauthorised third parties as a result of invoice storage.

3. For bills of exchange and cheques, payment is considered made only after redemption. Discounts and expenses are for account of the Buyer.

4. Bills of exchange or cheques are accepted only on account of performance, bills only on separate agreement. Irrespective of the maturity of bills of exchange accepted or of a deferment granted, our claims become due immediately if the Buyer fails to observe the agreed payment terms or if circumstances become known which cast doubt on his creditworthiness. In such cases, we are entitled to make deliveries only on advance payment or on supply of collateral or to withdraw from the contract and/or demand compensation after setting an adequate grace period.

5. The Buyer may offset our claims or exercise a right of retention only against counterclaims that are undisputed or have been determined with legal finality.

**V. Delivery Term, Liability and Partial Deliveries**

1. The delivery term begins as soon as all details of the order have been clarified and both parties are in agreement on all terms of the transaction and the Buyer has paid a possibly required downpayment. A delivery date is considered observed when up to its expiry, the products have left the factory or shipping readiness has been advised to the Buyer.

2. If shipment has not been made by the due date and has likewise not been made within an adequate grace period set by the Buyer – whereby the Buyer is required to set a grace period also when the shipping date has been or can be scheduled on a calendar basis – for reasons attributable to us, the Buyer is entitled to withdraw from the order.

3. Compensation claims are subject to the contents of Item VIII below.

4. Force majeure or circumstances beyond our control and which prevent the execution of the order by the agreed date entitle us to an adequate postponement of obligations assumed or, if our performance is rendered impossible thereby, to withdraw from the contract in whole or in part. The same applies if the materials required by us for the execution of the order and ordered from our suppliers fail to reach us or are not received in good time for reasons beyond our control provided we promptly inform the Buyer of the non-availability and reimburse possible counterperformances of the Buyer for the services not yet rendered. Compensation claims of any kind are excluded.

5. Partial deliveries are permitted when these are usable by the Buyer within the limits of the contractual purpose and no substantial extra costs are incurred by the Buyer as a result.

**VI. Material Defects**

1. The quality of our products is a function of the agreed technical delivery details. When our delivery is a function of drawings, specifications, samples etc. supplied by the Buyer, the latter assumes the risk of suitability for the intended purpose. The contractual state of the product at the time of transfer of risk is relevant.

2. All our deliveries are made in compliance with current statutory regulations of the European Union and the Federal Republic of Germany.

3. Material defects resulting from improper or unauthorized use, defective assembly or operation by the Buyer or a third party, customary wear or of improper or negligent treatment are not covered by our warranty as are the consequences of unauthorized modifications or repairs by the Buyer or a third party performed without our consent.

**VII. Notification of Defects, Warranty, Liability**

1. Irrespective of the duty of prompt inspection and notification pursuant to Sec. 377 HGB covering both sides of a commercial transaction, the Buyer must promptly after delivery examine the shipped goods in particular for any visible (obvious) defects and promptly report to us possible defects – also in the case of incomplete or erroneous deliveries – or in the case of defects detected only later, within 3 working days from their detection by the Buyer; otherwise, products are deemed approved and the Buyer may no longer derive any rights against us in this respect.

2. When the acceptance of the goods or the inspection of an initial sample was agreed, a complaint is excluded for defects which the Buyer could have detected applying due diligence during the acceptance or inspection of the initial sample.

3. To give us the opportunity to investigate a claim made, claimed products must on our demand be returned to us promptly whereby shipping charges will be borne by us if the complaint was justified. If the Buyer fails to meet this obligation or makes modifications without our consent to products which are the object of a complaint, the Buyer jeopardizes or forfeits his right to the claim.

4. If a complaint is justified, we are required to provide for the free repair of the delivered goods or, at our discretion, deliver a replacement. If the repair or replacement fails or is denied as being without merit or is unreasonably delayed by us, the Buyer is entitled to a reduction of the price or, except when the object of the complaint is a construction service, at his discretion, demand the rescission of the contract.

5. Compensation claims are subject to Item VIII below.

6. Claims are not valid when the defect is caused by the non-observation of operating, maintenance or installation instructions, unsuitable or improper use, incorrect or negligent treatment, natural wear, or by modifications of the goods by the Buyer or a third party.

**VIII. Liability for Compensation (Limits and Exclusions)**

1. If we are in breach of a material contract obligation instrumental to the performance and proper execution of the contract and whose fulfillment the Buyer has a right to expect, we shall be liable only for simple negligence and possible claims for compensation shall be limited to the foreseeable typical damage at the time of contract conclusion.

2. In the event of our liability for simple negligence, our liability for property damage and resulting subsequent asset damage shall be limited to such damage which is customarily and typically insurable at reasonable terms under possible third-party liability insurance or product liability insurance even when a breach of a material contract obligation was involved.

3. Indirect or consequential damage as a result of a product defect is liable to be compensated only if such damage can typically be expected when the product is used for the intended purpose.

4. In all other matters – subject to Item 6 below – our liability irrespective of the legal reason is limited to compensation in particular for infeasibility, delay, defective or incorrect deliveries, breach of contract, defective contract performance and unauthorized acts, as far as any culpability exists in a given case, and limited to damage that results from grossly negligent breach on our part or from premeditated or gross negligence by our legal representatives or vicarious agents.

5. The above exclusions and limitations of liability apply equally in favour of our corporate officers, legal representatives, employees or other vicarious agents.

6. The above exclusions and limitations of liability do not apply to damage resulting from injury to life, limb or health or from negligent dereliction on our

part or from premeditation or gross negligence by our legal representatives or vicarious agents. Warranty claims or claims under the ProdHaftG remain unaffected.

#### **IX. Limitation and Limit Periods**

1. Claims under VII lapse within one year from the date of handover of the shipment to the Buyer.

2. In departure therefrom, claims lapse within the statutory limitation period:
- In the case of premeditated, malicious or grossly negligent dereliction on our part, or by our legal representatives or vicarious agents;
  - In the case of damage from injury to life, limb or health resulting from negligent dereliction on our part or negligent dereliction on part of our legal representatives or vicarious agents;
  - For claims under warranty for the quality of a product;
  - When we are required to replace the costs assumed by the Buyer vis-à-vis a subcontractor in the delivery chain on account of the sale of a new product for the purpose of supplementary performance (Sec. 478 Subsec. 2 BGB);
  - If based on the customary purpose of use, a product delivered to us was used for a building and has caused a defect in the latter and when the contract in its entirety was not based on Part B of the Contracting Rules for Building Services [VOB].

3. In all these cases, the period of limitation shall commence as per the statutory provisions. Statutory regulations governing the suspension, obstructions, recommencement or limit periods remain unaffected. Compensation claims for damage pursuant to ProdHaftG shall be subject to the statutory provisions on limitations, likewise in the case of premeditated or grossly negligent dereliction.

4. If we are liable under VIII for damage that can customarily and typically be insured with a third-party liability insurance to be taken out by us at adequate terms, the limitation period shall likewise be one year.

#### **X. Reservation of Title**

1. We reserve ownership to the product (reserved goods) until all other claims against the Buyer out of our business relationship including future claims, also from contracts concluded simultaneously or in the future, have been settled. With open accounts, reservation of title and all rights serve to secure our total payment claims including interest and costs. The Buyer must promptly notify us of any attachments or other interventions by a third party.

2. The Buyer is entitled to process and resell the product as part of his normal trade. This power ends if the Buyer is in arrears, suspends payments or if insolvency proceedings are opened over his assets. In such a case, the Buyer may resell reserved goods only with the proviso of our ownership and must ensure that claims from a resale as per Item. 5 and 6 are assigned to us. The use of reserved goods to meet manufacturing or service obligations is likewise considered a resale. Other forms of disposal of reserved goods, in particular their use as collateral or their assignment as a security, is not permitted. An assignment of claims from the resale of reserved goods to a third party is not permitted unless it is an assignment by way of genuine factoring reported to us and in which the factoring revenue exceeds the value of our secured claims. Our claims become due immediately on receipt of the factoring revenue.

3. The Buyer does not acquire ownership to the new product in the sense of Sec. 950 BGB as a result of any compounding or processing of reserved goods. The processing or compounding is performed on our behalf without any obligation on us. Processed and compounded products are considered reserved goods.

4. The processing, mixing or blending of reserved goods with other products entitles us to co-ownership in the new product at a ratio of the invoice value of the reserved goods to the invoice value of the other products used in them. When our ownership expires as a result of mixing, blending or processing, the Buyer assigns to us already at this time the rights to actual or potential ownership of the new stocks or products to which he is entitled to the extent of the invoice value of the reserved goods, in the event of processing at the ratio of the invoice value of the reserved goods to the invoice value of other goods used in them, and agrees to maintain them in force on our behalf free of charge. Our rights of co-ownership are considered reserved goods.

5. The Buyer agrees to assign to us by way of security his claims out of a resale of reserved goods already at this time. They serve for security purposes to the same extent as reserved goods. When reserved goods are resold by the Buyer together with other goods, the claim from the resale shall be assigned to us at a ratio of the invoice value of the reserved goods to the invoice value of the other goods. When goods for which we are co-owners as per Item 4 are resold, the share of the co-ownership that corresponds to our part of the claims shall be assigned to us. Also shall be assigned to us all other claims taking the place of the reserved goods or created in their regard as e.g. insurance claims or claims due to breach of contractual obligations or unauthorized acts. The Buyer is revocably empowered to collect for our account claims assigned to us. In the event that the conditions for the realisation of the collateral arise, we are entitled to revoke the power of collection.

6. The Buyer empowers us to inform other buyers of the assignment as soon as he is in arrears with a payment or his asset situation deteriorates, and to collect the claims ourselves. We may demand an audit of assigned claims by our agent using the bookkeeping records of the Buyer. The Buyer must hand over to us a breakdown of reserved goods still at hand and give us all necessary information needed to assert assigned claims including a breakdown of his claims out of the resale of reserved goods, quoting names and addresses of the Buyers.

7. If the value of the existing securities exceeds the secured claims by more than 10%, we are at the request of the Buyer obligated to release securities of

our choice while safeguarding the legitimate interests of the Buyer. The value of the securities in the case of a simple or subsequent reservation of title is the invoice value at which the Buyer has purchased the goods from us; in the case of an extended reservation of ownership it is the invoice value at which the Buyer resells our goods, in each case with a valuation discount of 1/3 off the purchase price or off the nominal value of assigned claims.

8. For bills of exchange, cheques etc., payment is deemed to have been made only after redemption by the Buyer has been confirmed. Cheques are accepted only on account of performance. Payments made on presentation of a bill of exchange issued by us are considered made only when recourse against us for a cheque or bill of exchange is no longer possible. Irrespective of our further rights, any securities granted to us remain in force up to such time.

9. Due to our reservation of title, we may demand the return of the goods if we withdraw from the contract. We are entitled to withdraw irrespective of any other conditions under Sec. 323 BGB, in particular without setting a limit date, as of the point of time at which the Buyer is in arrears with payments in whole or in part. The same applies if the Buyer suspends payments or if insolvency proceedings are opened over his assets. All costs generated by the repossession of the goods shall be borne by the Buyer. We are entitled to resell the retrieved goods on the open market.

#### **XI. Property Rights**

1. Under Item XI, we are responsible for the absence from the product of any industrial property rights or copyright of third parties in the country or state of the agreed place of delivery. In the absence of any explicit written agreement to the contrary, the exclusive place of delivery is Wenden-Hillmicke in Germany. Each Contract Party shall promptly notify the opposite Party in writing if possible claims are raised on account of the infringement of such rights. The contents of Clause 1 above does not represent a warranty but merely an agreement on quality within the limits of the statutory warranty provisions.

2. In the event that the product infringes an industrial property right or copyright of a third party, we will at our choice and for our account either modify the object of delivery or replace it in such a way that the rights of a third party are no longer infringed while the product continues to provide the contractually agreed functions, or procure the right of use to the Buyer by concluding a licensing agreement. If we fail to do so within an adequate period of time, the Buyer is entitled to withdraw from the Agreement or to appropriately reduce the purchase price. Possible compensation claims of the Buyer against us shall be subject to the limitations in Item VIII of the present General Terms of Sale.

3. In the case of any legal infringements by products of other manufacturers supplied by us, we shall at our choice either assert our claims against the manufacturers and previous suppliers for account of the Buyer or assign the claims to him. In such a case, claims against us shall be valid under the applicable contract clause only if recourse to legal proceedings or the enforcement of the claims against the manufacturer or previous supplier was unsuccessful or has no prospects as e.g. due to insolvency.

4. When deliveries are made as a function of drawings or other information supplied by the Buyer and if the property rights of third parties are infringed as a result, the Buyer shall be responsible for their accuracy and for ensuring that no third-party property rights are infringed. He must to this extent keep us harmless from any claims of the rightholder in this respect; from claims for damages only if the Buyer can prove that he is not responsible for the inaccuracy of the drawings or other information or that he is not responsible for the infringement. If in such a case, we are prohibited from production or delivery to a third party on account of the property right, we shall be entitled, after an unsuccessful and adequate grace period set to the Buyer to eliminate the obstacle, to suspend the works or withdraw from the contract. Our assertion of a claim for compensation against the Buyer available under the statutory provisions remains unaffected.

#### **XII. Tools, Models, Drawings**

Tools, dyes, models and devices required by us for the production of the ordered product may be charged by us in full or a prorata basis. They remain our property and in our possession even when produced on instructions of the Buyer and the Buyer has paid for them on a prorata basis or in full. If they were produced on specific instructions of the Buyer, they shall be used exclusively for deliveries to the Buyer provided that the latter meets his acceptance and payment obligations and that the business relationship continues.

#### **XIII. Place of Performance, Court of Jurisdiction, Governing Law**

1. The place of performance is Wenden-Hillmicke
2. The court of jurisdiction is the one competent for our domicile in Wenden-Hillmicke.
3. All deliveries and services are subject to the laws of the Federal Republic of Germany. UN Purchase Law is explicitly excluded.

#### **XIV. Data Processing Permission**

We are permitted to process all data concerning the Buyer and supplied to us during the business relationship within the limits of the currently applicable statutory regulations.

#### **XV. Code of Conduct**

We are committed to complying with the principles set out in our Code of Conduct. We will terminate business relationships or contractual relationships as soon as possible upon becoming aware of any contradictions to our principles.

#### **XVI. Saving Clause**

If one or several of these terms should be or become ineffective, the validity of the remaining provisions shall not be affected. The Contract Partners undertake to replace the ineffective provision with an equivalent and legally permitted term.